

NOTE: MGO IS NOT BEING SOLICITED. SEE FUEL, NAVAL, DISTILLATE MIDDLE-MILITARY MARINE APPLICATION SPECIFICATIONS ON PAGE 46.

B1.04-1-100 SUPPLIES TO BE FURNISHED (SHIPS' BUNKERS) (DESC MAY 2005)

(a) **SHIPS' BUNKERS.** Unless otherwise stated, the supplies shall be furnished f.o.b. destination as ships' bunkers into various types and sizes of U.S. military and federal civilian vessels for immediate consumption by the vessel. Unit prices are for product delivered inclusive of all delivery charges. Depending on the delivery conveyance's size, quantities ordered and delivered by truck or barge (as contracted) may require utilization of more than one truck or barge or return trips to fulfill the ordered fuel quantity.

(b) **REQUIREMENTS.** This is a requirements contract for the supplies or services specified and effective for the period stated in paragraph (i).

(1) The quantities of supplies or services specified in the Schedule are best estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(2) Delivery or performance shall be made only as authorized by orders issued in accordance with the ordering provisions herein. Subject to any limitations in the order limitations provisions herein or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the ordering provisions. In addition, if a Government facility is located near the bunkering location, the Government shall only order from the Contractor the Government's fuel requirements that are in excess of its in-house capabilities. In such instances, the estimated quantities specified in the Schedule are estimates of requirements in excess of the quantities that the Government may itself furnish within its own capabilities. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations. Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule. The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract. However, the total quantity ordered and required to be delivered by the specified method of delivery during the ordering period may be greater than or less than these total estimated quantities.

(3) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(4) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; PROVIDED, that the Contractor shall not be required to make any deliveries under this contract after the end of the stated delivery period.

(5) The Government agrees to order and the Contractor shall, if ordered, deliver during the contract period, at the unit prices hereunder, adjusted in accordance with the ECONOMIC PRICE ADJUSTMENT – MARKET PRICE INDICATORS (SHIPS' BUNKERS) clause or the ECONOMIC PRICE ADJUSTMENT – ESTABLISHED CATALOG MARKET PRICE – OTHER THAN PUBLICATION (SHIPS' BUNKERS) clause of the contract (if applicable), the total actual requirements for the product(s) at the location(s) listed.

(6) Domestic requirements for ships' bunkers shall include all of the U.S. (including commonwealths and the District of Columbia), its territories, and possessions. Overseas requirements are those outside of the above. Domestic and overseas requirements are classified into separate Purchase Programs (PPs):

Domestic:

PP 3.7A - Pacific, West Coast, Great Lakes, Northeast, and Middle Atlantic States, to include inland river-ways therein.

PP3.7B - Caribbean, Southeast, Southwest, Gulf Coast, and inland river-ways therein.

PP3.7C - State of Alaska.

Overseas:

PP 1.3A - Europe and Middle East.

PP1.3B - Central/South America, Africa, and Far East/Pacific.

(c) **LINE ITEM SUPPLY SCHEDULE.**

<u>NATIONAL STOCK NUMBER</u>	<u>PRODUCT/PRODUCT CODE</u>	<u>SPEC CLAUSE</u>
DOMESTIC		
9140-01-521-5338	FUEL, NAVAL DISTILLATE, MIDDLE- MILITARY APPLICATIONS	C16.23-6/52.246-9FBL
9140-01-447-1031	BUNKER FUEL NAVAL DISTILLATE (B76)/30	C16.23-4/52.26-9FBK
9140-01-456-9443	DIESEL FUEL GRADE 2 (DF2)/34	C16.26-11/52.246-9FAW
9140-01-447-1092	FUEL OIL, BURNER GRADE #6 (FS6)/55	C16.38/52.246-9FCA
9140-01-447-1065	FUEL OIL BURNER GRADE #4 (FS4)/52	C16.38/52.246-9FCA
9140-01-271-5280	INTERMEDIATE FUEL OIL 180/98	C36/52.246-9FFE
9140-01-235-2882	INTERMEDIATE FUEL OIL 380/96	C36/52.246-9FFE
OVERSEAS		
9140-01-521-5344	FUEL, NAVAL DISTILLATE, MIDDLE MILITARY APPLICATIONS	C16.23-6/52.246-9FBL
9140-01-417-9723	FUEL OIL, BURNER GRADE #6 (FS6)/64	C16.38/52.246-9FCA
9140-01-417-6645	INTERMEDIATE FUEL OIL 180/62	C36/52.246-9FFE
9140-01-417-6632	INTERMEDIATE FUEL OIL 380/63	C36/52.246-9FFE

NOTE: Delivery of a single order may require multiple vehicles or trips.

The acronym **TK** means tanker, **B** means barge, **TT** or **RTW** means transport truck, **TTR** means truck and trailer, **TW** means tank wagon, **P** means pipeline (ex-pipe/ex-wharf), and **MSS** means Marine Service Station.

<u>ITEM</u>	<u>SUPPLY, BUNKER LOCATION, AND METHOD OF DELIVERY</u>	<u>(LENGTH OF PERIOD) ESTIMATED QUANTITY (UNIT OF MEASURE)</u>	<u>UNIT PRICE PER (UNIT OF MEASURE)</u>
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(d) **DELIVERY MODE SPECIFICS.** See also the BUNKERING PROVISIONS clause.

(1) **PIPELINES.** For all line items above that require pipeline (ex-pipe at pier or wharf) as the method of delivery, the exact location of the Contractor's pipeline shall be listed below. **NOTE: Access to the pipeline pier must be able to provide for vessels at least 90 feet in height. Specific obstacles such as bridges, jetties, locks, etc., must be advised below to include low and high tide and time. Pumping rates per delivery conveyance shall be as stated in the BUNKERING PROVISIONS clause unless stated differently in the above Schedule.**

<u>ITEM</u>	<u>SPECIFIC PIPELINE DELIVERY LOCATION</u>	<u>MAXIMUM DRAFT & MEAN LOW TIDE/TIME</u>	<u>OBSTACLES?</u>
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(2) **TRUCKS.** For all items above that require tank wagon, transport truck, and/or truck and trailer as the method of delivery, offerors must specify the capacity and pumping rate of the truck(s).

<u>ITEM</u>	<u>TRUCK CAPACITY</u>	<u>TRUCK PUMPING RATE</u>
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(3) **BARGE.** Barge deliveries shall be required at pier-side and/or anchorage (inner and outer harbor). Pumping rates per delivery conveyance shall be as stated in the BUNKERING PROVISIONS clause unless stated differently in the above Schedule.

(e) **TAXES.** Unless the contract provides otherwise, the contract price must include all applicable taxes and, for overseas items, duties. The offeror shall list below the specific name and amount of the taxes included in the price. If, when permitted by the contract, taxes are not included in the offered price, but are expected to be invoiced separately, the offeror shall list the specific name and amount of these taxes below. These taxes shall apply when the U.S. Government does not have an exemption. See the FEDERAL, STATE, AND LOCAL TAXES/FEES EXCLUDED FROM CONTRACT PRICE clause and/or the TAXES - FOREIGN FIXED-PRICE CONTRACTS clause.

<u>ITEM</u>	<u>APPLICABLE TAX NAME AND AMOUNT PER UNIT</u>	(X THE APPLICABLE COLUMN)	
		<u>INCLUDED IN UNIT PRICE</u>	<u>TO BE INVOICED SEPARATELY</u>

NOTE: For domestic distillate items, the current Federal Excise Tax shall apply only if fuel delivered is undyed per mandated requirements. Please advise, per item, if offered product will have a low or high sulfur content and/or if dyed or undyed, if not part of the current Schedule. Subject tax will not be included in the offered unit price. Special note for overseas distillate items: if fuel is dyed per in-country mandated requirements, please so advise with specifics on the dye and its effect on fuel specifications.

(f) **LOCATION OF FACILITY(IES).**

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(1) Each Fuel Terminal, Transportation Type and Source, and Location of the Testing Facility are required for possible assignment, at origin, of Government Quality Assurance (inspection) Actions. Primary and alternates are requested. Government Quality Assurance inspections at origin, if applicable, shall be assigned in (3) below. The following columns shall be completed by the offeror: The facilities identified below by the offeror shall be used for the life of the contract. No changes can be made without approval of the Contracting Officer.

<u>ITEM(S)</u>	<u>SUPPLIER NAME/TERMINAL AND FULL PHYSICAL ADDRESS(ES)</u>	(For barge and truck deliveries) <u>TRANSPORTATION SOURCE(S) NAME(S) & FULL PHYSICAL ADDRESS(ES)</u>	TESTING FACILITY(IES) NAME(S) & FULL PHYSICAL ADDRESS(ES)
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(2) Quality Representative (QR) includes the terms Quality Assurance Representative (QAR) and Quality Surveillance Representative (QSR). The QAR is a Government Representative authorized to represent the Contracting Officer to assure the Contractor complies with the contractual requirements in furnishing petroleum products and services. The QSR is a Government Representative authorized to represent the Contracting Officer to assure the Contractor complies with the contractual requirements in furnishing services.

(3) The following may be completed by the Government at time of award. Government Source Inspection is required for items listed below:

(g) DELIVERY ORDERS.

(1) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or activities defined as an Ordering Officer. Any U.S. military and Federal civilian agency vessel may utilize this contract. An Ordering Officer means whichever of the following (or their designated representatives) is applicable: (1) the Commander, Defense Energy Support Center; (2) the Commander, U.S. Army Petroleum Center; (3) the Commanding Officer, U.S. Navy Petroleum Office; (4) the Officer in charge of the Federal Government activity encompassing any delivery point indicated in the Schedule; (5) the Commanding Officer or the Master of the vessel to be bunkered; (6) any Government Contractor furnishing evidence of authority to order under this contract; (7) the head of any Federal Government agency; (8) the Contracting Officer; (9) the Navy Fleet Commanders; (10) the Defense Attaché Officer; (11) the authorized ship manager (Contractor) for the Maritime Administration and/or National Aeronautic and Space Administration (NASA) who is ordering ships' bunkers on behalf of Maritime Administration and/or NASA vessels; (12) the ships' husbanding agent, furnishing evidence of contractual authority, who passes the order (verbal or written) on behalf of the requesting Government vessel; (13) Military Sealift Command Fuel Ordering Officers. All delivery orders are subject to the terms and conditions of this contract. In the event there is a conflict between a delivery order and this contract, the contract shall control.

(2) **ORAL ORDERS.** Bunker fuel orders may be issued orally or in writing. An oral delivery order may be considered issued by the Ordering Officer when it is verbally assigned a purchase order and/or delivery order number and the delivery specifics have been verbally communicated to the Contractor. A verbal delivery order number may also be the Date Time Group (DTG)

number from the vessel's Logistics Requirements (LOGREQ) Report issued to a Government shore activity or contracted husbanding agent. Contractors are encouraged to request evidence to substantiate a verbal delivery order. For military and U.S. Coast Guard vessels, a contracted husbanding agent or Government shore activity may serve as liaison for the requesting vessel to be bunkered. The Government shore activity or contracted husbanding agent will pass the above-described oral order issued by the vessel, along with evidence of this order, to the Contractor in a timely manner and will coordinate the delivery of the fuel. The husbanding agent, not having authority to bind the Government, must clearly advise the Contractor of its role in this arrangement and show valid evidence (DTG from LOGREQ copy of e-mail or LOGREQ from vessel to husbanding agent, etc.) of the order requirement initiated by the U.S. Government vessel.

(3) **WRITTEN DELIVERY ORDERS.** For all orders, the appropriate ordering office/officer will provide a signed, written order--

- (i) A Department of Defense (DD) Form 1155 for DoD agencies;
- (ii) An Optional Form (OF) 347 for all Federal/Civilian Agencies;
- (iii) A Commerce Department (CD) Form 404 for the National Oceanic and Atmospheric Administration; or
- (iv) An SF 1449 for all of the above--

to the Contractor or its designee in place of or after issuing the above-described oral order. The written delivery order will be provided to the Contractor, or its designee, prior to or at completion of delivery; however, Contractors are highly encouraged to request the written delivery order prior to completion of the delivery if not already received. The order form must, at a minimum, include the contract number, Contractor's name and address, contract line item number, payment office, signature of the Ordering Officer, ships' ordering and payment information, and quantity of fuel ordered. In the event a written delivery order is not provided after delivery, the Contractor shall promptly contact the DESC Contracting Officer for assistance. The ordering office's failure to issue written confirmation, or the Contractor's failure to receive written confirmation, does not relieve the Contractor from its obligation to perform in accordance with the oral order.

(4) Credit cards of any type shall not be used to create a delivery order under this contract.

(h) **DELIVERY ORDER LIMITATIONS.**

(1) **MINIMUM ORDER.** When the Government requires supplies or services covered by this contract in an amount of less than the minimum quantity applicable to the method of delivery called for by the item(s) as specified in the Schedule, the Government shall not be obligated to purchase, nor the Contractor obligated to furnish, any supplies or services under this contract.

(2) **MAXIMUM ORDER.** The Contractor shall not be obligated to honor any order for a single item, or any series of orders from the same ordering office in the course of 30 days, that exceeds the limitations listed below:

- (i) For items calling for delivery as ships' bunkers by barge or pipeline--

<u>TOTAL ESTIMATED QUANTITY OF ITEM</u>	<u>LIMITATION</u>
Less than 500,000 USG/1,700 MT	The total estimated quantity
500,000 to 2,500,000 USG/1,700 to 8,700 MT	500,000 USG/1,700 MT or 50% of the total estimated quantity, whichever is greater
More than 2,500,000 USG/8,700 MT	1,250,000 USG/4,350 MT or 25% of the total estimated quantity, whichever is greater

- (ii) For items calling for delivery by truck--

<u>TOTAL ESTIMATED QUANTITY OF ITEM</u>	<u>LIMITATION</u>
Less than 100,000 USG/350 MT	The total estimated quantity
100,000 to 500,000 USG/350 - 1,700 MT	100,000 USG/350 MT or 50% of the total estimated quantity, whichever is greater
More than 500,000 USG/1,700 MT	250,000 USG/870 MT or 25% of the total estimated quantity, whichever is greater

(i) **DELIVERY AND ORDERING PERIODS.** The period during which the Government may order and the Contractor shall deliver, if ordered, will be as specified below unless the Schedule specifies otherwise.

- 1) **ORDERS:** The ordering period begins: OCTOBER 1, 2005 and ends SEPTEMBER 30, 2007.

(2) **DELIVERIES:** The **delivery period** begins: **OCTOBER 1, 2005** and ends **OCTOBER 31, 2007**.

(3) **EXTENSION PROVISIONS.** The Government reserves the right to unilaterally extend this contract on the same terms and conditions on a month-to-month basis one or more times for a total of no more than six months. Notice of contract extension will be furnished to the Contractor no later than 10 days prior to expiration of this contract or any extension thereof. However, nothing in this clause precludes the Contractor from agreeing to an extension of the contract if the Government fails to issue the notice within the 10-day time frame. Extension of this contract shall be considered to have been accomplished at the time the Government provides written notification to the Contractor via mail deposit or facsimile.

(4) **FOR ALL ITEMS.** Notwithstanding the foregoing paragraphs, if the Government requests and the Contractor agrees to honor an order outside the delivery limitations set forth above and/or the minimum advance delivery order notice, the order will be bound to the terms, conditions, and price(s) established in the contract. The Contractor shall honor any written or oral order(s) outside the delivery order limitations set forth above or agreed to by the parties within the contract, unless the Contractor rejects the order(s) by notifying the issuing office immediately upon its receipt, as prescribed below, but no later than 24 hours from the time of its issuance. If the order is issued on a weekend and/or holiday and it falls outside the delivery order limitations, the Contractor has until noon of the next business day to reject the order.

Contractor Notification: The Contractor's rejection notice must be given first verbally, by calling the ordering office, followed by a written notification, which should preferably be sent via facsimile. The Contractor's written notice of rejection must clearly state (1) the intent not to deliver the ordered item(s) and (2) the reasons for rejection, and must be accompanied with the written order, if there is one. Upon receipt of the Contractor's verbal notice of rejection, the Government may secure the supplies from another source. The Government is not required to order a part of any one requirement from the Contractor when such requirement falls outside the advance delivery order notice and/or delivery order limitations set forth in this clause or agreed to by the parties within the contract.

(5) **FOR ALL ORDERS.** The Government must place orders during the Contractor's normal business operating hours for receipt of orders for a delivery to occur on a weekend and/or holiday. If an order for a delivery that is urgently required on a weekend and/or holiday cannot be placed during the Contractor's normal operating hours for receipt of orders, the Government shall first verbally contact the Contractor for offer of said order. If the Contractor verbally elects to not accept said order, the Government shall document as such and pursue Local Purchase Authority (LPA) meeting the Competition in Contracting Act (CICA). CICA shall apply for any time LPA is utilized.

(j) **ORDERING POINT(S) OF CONTACT.** Due to vessel missions, it is imperative that Contractor's be reachable **at all times** for order placement and timely deliveries. To ensure prompt delivery of the supplies to be furnished for ships' bunker requirements, the Contractor **shall** provide a primary and/or alternate point of contact for receipt of orders 24 hours a day, 7 days a week, for each item listed below. Complete telephone and facsimile numbers including country and/or area codes are requested. Alternative numbers, such as beepers, pagers, cell phones, etc., are also requested. The Contractor may, at its option, assign a Contractor designee at each delivery location as the point of contact, provided the designee agrees to act as the Contractor's representative for this purpose. The following table shall be used for order placement for ships' bunkers:

Item Number	Contact Person and Location	Complete Telephone Number	Complete Facsimile Number	E-Mail Address	Normal Operating Hours and Days for	
					Orders	Deliveries

(k) **OVERTIME.** If delivery cannot be made during the Contractor's normal operating hours, as set forth in paragraph (j) above, the Contractor shall continue with or initiate deliveries during other than normal operating hours as requested by the vessel's officer with Ordering Officer authority or, in such instances, as authorized in writing by the Contracting Officer. The Government agrees to reimburse the Contractor for overtime payment costs associated with deliveries made outside the Contractor's normal operating hours in accordance with the schedule below. The Contractor shall provide applicable overtime documents, showing date and time overtime commenced and concluded, to the Receiving Officer who shall certify that said charges have been incurred. In the event that overtime

may apply for deliveries outside of the operating hours and days cited in paragraph (j) above, the Contractor must advise of such time factors and the overtime rate per hour that shall apply per item. **NOTE:** U.S. Navy and some port regulations may prohibit deliveries from occurring at nighttime. Further, some vessels carrying ammunition or other cargoes considered hazardous may not be allowed to enter certain ports (pier-side) during specific hours or not at all, requiring deliveries at non-peak times and/or at anchorage, respectively.

<u>Item Number</u>	<u>Hours & Days Outside of Normal Delivery</u>	<u>Rate per hour</u>
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Notwithstanding the above, the Government will not pay more than the actual rate charged by the common carrier or the rate the Contractor normally charges its regular commercial customers, whichever is lower.

(l) **RECEIPTS.**

(1) Upon completion of the fuel delivery, the Contractor, or the Contractor's designee, shall prepare a commercial receipt. A commercial receipt is defined as a commercial bunker receipt, a commercial bill of lading, and/or delivery ticket for the exact type of fuel under contract. The Contractor shall then, and in the presence of the Government representative at the time of the delivery, clearly annotate on the commercial receipt, in English--

- (i) The exact type of fuel delivered, which must match the contract item;
- (ii) The date and time of the delivery commencement and completion;
- (iii) The Government vessel's name;
- (iv) The delivered fuel temperature; and
- (v) The net delivery quantity.

(2) **FOR DOMESTIC DISTILLATE CONTRACTS ONLY.** If the fuel was dyed in accordance with U.S. Government environmental and revenue requirements, this must also be cited on the commercial receipt.

(3) The receiving vessel's representative shall certify the commercial receipt, acknowledging receipt and acceptance of the fuel type, net quantity, date of fuel receipt, and sign for fuel acceptance. A legible copy of the commercial receipt will be provided to the receiving vessel. It is imperative that the receipt be annotated for the same type of fuel under contract.

(4) Alternatively, the receiving vessel's representative may utilize the ordering document to certify receipt and acceptance of the fuel type and quantity when a commercial receipt is not available; provided there will be no recurring deliveries against that order. **Certification of acceptance is accomplished when the vessel's representative (i) encircles the ordered quantity, (ii) annotates the received net quantity beneath the encircled quantity, and then (iii) dates and (iv) signs the receipt portion of the ordering document. WITHOUT ALL FOUR OF THE AFOREMENTIONED PROVISIONS, THE ORDER DOCUMENT CANNOT BE USED FOR RECEIPT CERTIFICATION.** If available, the ships' stamp shall be annotated on the order form.

(5) Whichever documentation is used, the Contractor or its representative shall ensure the vessel's representative annotates the actual net quantity received utilizing the contracted unit of issue, i.e., U.S. gallons for domestic locations and metric tons for overseas locations. The vessel's representative shall return the certified receipt documentation to the Contractor or the Contractor's designee, prior to departure. The vessel's representative shall retain a copy for the vessel's records.

(m) **ADDITIONAL INFORMATION.**

- (1) Does your company have world wide web/internet access? ☐ Yes ☐ No

NOTE: For those companies with internet access, DESC will not issue paper copies of price change modifications for any resultant contract as these same price changes are available on the DESC Home Page at <http://www.desc.dla.mil/main/doinbusi.htm>.

- (2) Does your company have a web site? ☐ Yes ☐ No

If yes, what is the web address? _____

- (3) Does your company have e-mail capability? ☐ Yes ☐ No.

If yes, what is your e-mail address? _____

- (4) May initial fuel orders be transmitted to this e-mail address? ☐ Yes ☐ No

Note: Order placement in this manner shall require immediate confirmation of receipt by the Contractor to the ordering activity.

- (5) What is your company's Dun and Bradstreet number? _____

(n) **NOTES FOR THE (RFP/CONTRACT):**

THE FOLLOWING TERMS AND CONDITIONS WILL BE EFFECTIVE WHEN DESC-PEB INTEGRATES THE BUNKERS SEA CARD INTO THE PERFORMANCE PERIOD OF CONTRACTS RESULTING FROM THIS SOLICITATION:

1. DESC Bunkers will begin testing the new Ships' Bunkers Easy Acquisition (SEA) Card from 21 February 2005 through 31 August 2005. The Contracting Officer shall notify all contractors required to participate in the SEA Card test in writing. During this test period, designated bunkers contractors must accept the SEA Card and use the SEA Card Order Management System (SCOMS) for all bunkers contract transactions. SCOMS is an Internet-based operating system that automates ordering, receipt, delivery and invoicing for all bunkers contract transactions. Contractors are required to have computer systems with full Internet capabilities. Specific details about minimum computer and Internet requirements will be provided by the Contracting Officer. The Contracting Officer (or his/her designated representative) will provide the contractor with sufficient training for using SCOMS during the test period. Multi-Service Corporation and BP Marine will be providing SCOMS, the SEA Card and all associated services to DESC.
2. During the test period, contractors using SCOMS will not submit paper copies of orders, receipts, delivery tickets or invoices. The contractor shall maintain paper copies of these documents.

(DESC 52.207-9F30)

11.03-5 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (BUNKERS) (DESC JUN 2004)

(a) **INSPECTION/ACCEPTANCE.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item. **Also see the Addendum.**

(b) **ASSIGNMENT.** The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract, to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes a payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its right to receive payment under this contract.

(c) **CHANGES.** See the **CHANGES – FIXED-PRICE clause in the Addendum.**

(d) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference.

(f) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) **INVOICE.** The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date and number;
- (3) Contract number, contract line item number, and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the items delivered;

(5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(6) Terms of any prompt payment discount offered;

(7) Name and address of official to whom payment is to be sent; and

(8) Name, title, and phone number of person to be notified in event of defective invoice.

(9) **Taxpayer Identification Number (TIN).** The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(10) **Electronic funds transfer (EFT) banking information.**

(i) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(ii) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer – Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration), or applicable agency procedures.

(iii) EFT banking information is not required if the Government waived the requirement to pay by EFT.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315. **Also see the Addendum.**

(h) **PATENT INDEMNITY.** The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) **PAYMENT.**

(1) **Items accepted.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) **Prompt payment.** The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) **Electronic Funds Transfer (EFT).** If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) **Discount.** In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) **Overpayments.** If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) **RISK OF LOSS.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **TAXES. See the Addendum.**

(l) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE.** The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) **TERMINATION FOR CAUSE.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **TITLE.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) **WARRANTY.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) **LIMITATION OF LIABILITY.** Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) **OTHER COMPLIANCES.** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations applicable to its performance under this contract.

(r) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986, 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistle blower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services;
- (2) The Assignments; Disputes, Payments; Invoices; Other Compliances; and Compliance with Laws Unique to Government Contracts paragraphs of this clause;
- (3) The clause at 52.212-5;
- (4) Addenda to this solicitation or contract, including any license agreements for computer software;
- (5) Solicitation provisions if this is a solicitation;
- (6) Other paragraphs of this clause;
- (7) Standard Form 1449;
- (8) Other documents, exhibits, and attachments; and
- (9) The specification.

(t) **CENTRAL CONTRACTOR REGISTRATION (CCR).** See the CENTRAL CONTRACTOR REGISTRATION (ALTERNATE A) clause.

(FAR 52.212-4, **tailored**/DESC 52.212-9F45)

11.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (JAN 2005)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).
- (2) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer shall check as appropriate.]

☒ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

☐ (2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).

☐ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer.) (15 U.S.C. 657a).

☐ (4) (i) 52.219-5, Very Small Business Set-Aside (Jun 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

☐ (ii) Alternate I (Mar 1999) of 52.219-5.

☐ (iii) Alternate II (Jun 2003) of 52.219-5.

☐ (5) (i) 52.219-6, Notice of Total Small Business Set-Aside (Jun 2003) (15 U.S.C. 644).

☐ (ii) Alternate I (Oct 1995) of 52.219-6.

- ☐ (iii) Alternate II (Mar 2004) of 52.219-6.
- ☐ (6) (i) 52.219-7, Notice of Partial Small Business Set-Aside (Jun 2003) (15 U.S.C. 644).
 - ☐ (ii) Alternate I (Oct 1995) of 52.219-7.
 - ☐ (iii) Alternate II (Mar 2004) of 52.219-7.
- ☒ (7) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
- ☒ (8) (i) 52.219-9, Small Business Subcontracting Plan (Jan 2002) (15 U.S.C. 637 (d)(4)).
 - ☐ (ii) Alternate I (Oct 2001) of 52.219-9.
 - ☐ (iii) Alternate II (Oct 2001) of 52.219-9.
- ☐ (9) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
- ☐ (10) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Jun 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
 - ☐ (ii) Alternate I (Jun 2003) of 52.219-23.
- ☒ (11) 52.219-25, Small Disadvantaged Business Participation Program – Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ☐ (12) 52.219-26, Small Disadvantaged Business Participation Program – Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ☐ (13) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).
- ☒ (14) 52.222-3, Convict Labor (Jun 2003) (E.O. 11755).
- ☒ (15) 52.222-19, Child Labor – Cooperation with Authorities and Remedies (Jun 2004) (E.O. 13126).
- ☒ (16) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- ☒ (17) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
- ☒ (18) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).
- ☒ (19) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- ☒ (20) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).
- ☒ (21) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- ☐ (22) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
 - ☐ (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- ☐ (23) 52.225-1, Buy American Act – Supplies (Jun 2003) (41 U.S.C. 10a-10d).
- ☐ (24) (i) 52.225-3, Buy American Act – Free Trade Agreements – Israeli Trade Act (Jan 2005) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286).
 - ☐ (ii) Alternate I (Jan 2004) of 52.225-3.
 - ☐ (iii) Alternate II (Jan 2004) of 52.225-3.

☒ (25) 52.225-5, Trade Agreements (Jan 2005) (19 U.S.C 2501, et seq., 19 U.S.C. 3301 note).

☐ (26) 52.225-13, Restriction on Certain Foreign Purchases (Dec 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

☐ (27) 52.225-15, Sanctioned European Union Country End Products (Feb 2000) (E.O. 12849).

☐ (28) 52.225-16, Sanctioned European Union Country Services (Feb 2000) (E.O. 12849).

☐ (29) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

☐ (30) 52.232-30, Installation Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

☒ (31) 52.232-33, Payment by Electronic Funds Transfer – Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

☒ (32) 52.232-34, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

☐ (33) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

☐ (34) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

☒ (35)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. 1241 and 10 U.S.C. 2631).

☒ (ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

[Contracting Officer shall check as appropriate.]

☐ (1) 52.222-41, Service Contract Act of 1965, as Amended (May 1989) (41 U.S.C. 351, *et seq.*).

☐ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

☒ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Contracts) (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

☒ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

☒ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (May 1989) (41 U.S.C. 351, *et seq.*).

(d) **COMPTROLLER GENERAL EXAMINATION OF RECORD.** The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, AUDIT AND RECORDS -- NEGOTIATION.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR

Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the DISPUTES clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph, in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (Dec 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et. seq.).

(vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx. 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(FAR 52.212-5)

11.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (JAN 2005)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

☒ 52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207)

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

☐ 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

☒ 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

☒ 252.219-7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

☐ 252.225-7001 Buy American Act and Balance of Payments Program (APR 2003) (41 U.S.C. 10a-10d, E.O. 10582).

☐ 252.225-7012 Preference for Certain Domestic Commodities (JUN 2004) (10 U.S.C. 2533a).

☐ 252.225-7014 Preference for Domestic Specialty Metals (APR 2003) (10 U.S.C. 2533a).

- [] 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (APR 2003) (10 U.S.C. 2533a).
- [] 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (MAY 2004);
([] Alternate I (APR 2003)) (10 U.S.C. 2534 and Section 8099 of Pub. L. 104-61
and similar sections in subsequent DoD appropriations acts).
- [X] 252.225-7021 Trade Agreements (JAN 2005) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- [] 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).
- [] 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
- [] 252.225-7036 Buy American Act – Free Trade Agreements – Balance of Payments Program (JAN 2005);
([] Alternate I (JAN 2005)) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
- [] 252.225-7038 Restriction on Acquisition of Air Circuit Breakers (APR 2003) (10 U.S.C. 2534(a)(3)).
- [X] 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native
Hawaiian Small Business Concerns (OCT 2003) (Section 8021 of Pub. L. 107-248).
- [] 252.227-7015 Technical Data – Commercial Items (NOV 1995) (10 U.S.C. 2320).
- [] 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
- [] 252.232-7003 Electronic Submission of Payment Requests (JAN 2004) (10 U.S.C. 2227).
- [X] 252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- [X] 252.247-7023 Transportation of Supplies by Sea (MAY 2002); ([X] Alternate I (MAR 2000));
([] Alternate II (MAR 2000)); ([] Alternate III (MAY 2002)) (10 U.S.C. 2631).
- [] 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

- [] 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a).
- [X] 252.247-7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
- [] 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(DFARS 252.212-7001)

11.07 CENTRAL CONTRACTOR REGISTRATION (ALTERNATE A) (OCT 2003/NOV 2003)

(a) **DEFINITIONS.** As used in this clause--

(1) **Central Contractor Registration (CCR) database** means the primary Government repository for Contractor information required for the conduct of business with the Government.

(2) **Commercial and Government Entity (CAGE) code** means—

- (i) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or
- (ii) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code.”

(3) **Data Universal Numbering Systems (DUNS) number** means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

(4) **Data Universal Numbering System + 4 (DUNS+4) number** means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11 of the Federal Acquisition Regulation) for the same parent concern.

(5) **Registered in the CCR database** means that—

(i) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;

(ii) The Contractor's CAGE code is in the CCR database; and

(iii) The Government has validated all mandatory data fields and has marked the records **"Active."**

(b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation **"DUNS"** or **"DUNS+4"** followed by the DUNS or DUNS+4 number that identified the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) (1) (i) If a contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in the CCR database;

(B) Comply with the requirements of Subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i)(C) of this clause or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees

shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(h) Offerors and contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(FAR 52.204-7/DFARS 252.204-7004)

**K1.01-10 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (ALTERNATES I/II)
(JAN 2005/APR 2002/OCT 2000)**

An offeror shall complete only paragraph (j) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (b) through (i) of this provision.

(a) **DEFINITIONS.** As used in this provision--

(1) **Emerging small business** means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

(2) **Forced or indentured child labor means** all work or service—

(i) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(ii) Performed by any person under the age of 18 pursuant to a contract, the enforcement of which can be accomplished by process of penalties.

(3) **Service-disabled veteran-owned small business concern—**

(i) Means a small business concern—

(A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) The management and daily business operations are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(ii) **Service-disabled veteran** means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(4) **Small business concern** means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

(5) **Veteran-owned small business concern means a small business concern—**

(i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly-owned business, not less than 51 percent of the stock of which is owned by one or more veterans, and

(ii) The management and daily business operations of which are controlled by one or more veterans.

(6) **Women-owned business concern** means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(7) **Women-owned small business concern** means a small business concern--

(i) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(b) **TAXPAYER IDENTIFICATION NUMBER (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)**

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) **TAXPAYER IDENTIFICATION NUMBER (TIN).**

[] TIN: _____

[] TIN has been applied for.

[] TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal government;

(4) TYPE OF ORGANIZATION.

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.6049-4;

☐ Other: _____.

(5) COMMON PARENT.

☐ Offeror is not owned or controlled by a common parent.

☐ Name and TIN of common parent:

Name _____

TIN _____

(c) Offerors must complete the following representations when the resulting contract is to be performed in the United States or its outlying areas. Check all that apply.

(1) SMALL BUSINESS CONCERN. The offeror represents as part of its offer that it--

☐ is

☐ is not

a small business concern.

(2) VETERAN-OWNED SMALL BUSINESS CONCERN. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents as part of its offer that it—

☐ is

☐ is not

a veteran-owned small business concern.

(3) SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERN. (Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.) The offeror represents as part of its offer that it—

☐ is

☐ is not

a service-disabled veteran-owned small business concern.

(4) SMALL DISADVANTAGED BUSINESS CONCERN. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents, for general statistical purposes, that it--

☐ is

☐ is not

a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) WOMEN-OWNED SMALL BUSINESS CONCERN. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it--

☐ is

☐ is not

a woman-owned small business concern.

NOTE: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) WOMEN-OWNED BUSINESS CONCERN (OTHER THAN SMALL BUSINESS CONCERN). (Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it -

☐ is

a women owned business concern.

(7) TIE BID PRIORITY FOR LABOR SURPLUS AREA CONCERNS. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price.

(8) SMALL BUSINESS SIZE FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM AND FOR THE TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM. (Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.)

(i) (Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs)). The offeror represents as part of its offer that it--

☐ is

☐ is not

an emerging small business.

(ii) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs)). The offeror represents as follows:

(A) The offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) The offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following:)

NUMBER of EMPLOYEES

☐ 50 or fewer

☐ 51 - 100

☐ 101 - 250

☐ 251 - 500

☐ 501 - 750

☐ 751 - 1,000

AVERAGE ANNUAL GROSS
REVENUES

☐ \$1 million or less

☐ \$1,000,001 - \$2 million

☐ \$2,000,001 - \$3.5 million

☐ \$3,500,001 - \$5 million

☐ \$5,000,001 - \$10 million

☐ \$10,000,001 - \$17 million

☐ Over 1,000

☐ Over \$17 million

(9) **(Complete only if the solicitation contains the clause at FAR 52.219-23, NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS, or FAR 52.219-25, SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM - DISADVANTAGED STATUS AND REPORTING, and the offeror desires a benefit based on its disadvantaged status.)**

(i) **GENERAL.** The offeror represents that either--

(A) It--

☐ is

☐ is not

certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It--

☐ has

☐ has not

submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) **JOINT VENTURE UNDER THE PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS.** The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.

(iii) **ADDRESS.** The offeror represents that its address—

☐ is

☐ is not

in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. **Address,** as used in this provision, means the address of the offeror as listed on the Small Business Administration's register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR part 124, subpart B. For joint ventures, **address** refers to the address of the small disadvantaged business concern that is participating in the joint venture.

(10) **HUBZONE SMALL BUSINESS CONCERN. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.)** The offeror represents as part of its offer that--

(i) It--

☐ is

☐ is not

a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns Maintained by the Small Business Administration, and no material change in ownership and control, principal

office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It--

☐ is

☐ is not

a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. **(The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.)**

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(11) (Complete if the offeror represented itself as disadvantaged in paragraph (c)(4) or (c)(9) of this provision.)

The offeror shall check the category in which its ownership falls:

☐ Black American

☐ Hispanic American

☐ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

☐ Asian-Pacific American (persons with origin from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

☐ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

☐ Individual/concern, other than one of the preceding.

(d) REPRESENTATIONS REQUIRED TO IMPLEMENT PROVISIONS OF EXECUTIVE ORDER 11246.

(1) PREVIOUS CONTRACTS AND COMPLIANCE. The offeror represents that--

(i) It--

☐ has

☐ has not

participated in a previous contract or subcontract subject to the EQUAL OPPORTUNITY clause of this solicitation; and

(ii) It--

☐ has

☐ has not

filed all required compliance reports.

(2) AFFIRMATIVE ACTION COMPLIANCE. The offeror represents that--

(i) It--

- [] has developed and has on file
 [] has not developed and does not have on file

at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It--

[] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) CERTIFICATION REGARDING PAYMENTS TO INFLUENCE FEDERAL TRANSACTIONS (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000). By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) TRADE AGREEMENTS CERTIFICATE (JAN 2004) (DFARS 252.225-7020). (Applies only if DFARS clause 252.225-7021, TRADE AGREEMENTS (JAN 2004), is incorporated by reference in this solicitation.) DFARS 252.225-7020 is hereby incorporated by reference in its entirety; only the certification portion is reproduced below.

(1) For all line items subject to the TRADE AGREEMENTS clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in subparagraph (2) below, is a U.S.-made qualifying country, designated country, Caribbean Basin country, or Free Trade Agreement country end product.

(2) The following supplies are other nondesignated country end products:

 (Insert line item no.)

 (Insert country of origin)

(g) BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JAN 2004) (DFARS 252.225-7035). (Applies only if DFARS clause 252.225-7036, BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM (JAN 2004) is incorporated by reference in this solicitation.) DFARS 252.225-7035 is hereby incorporated by reference in its entirety; only the certification portion is reproduced below.

(1) For all line items subject to the BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM clause of this solicitation, the offeror certifies that—

- (i) Each end product, except the end products listed in subparagraph (2) below, is a domestic end product; and
 (ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the

United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

- (i) The offeror certifies that the following supplies are qualifying country (except Canadian) end products:

 (Insert line item number)

 (Insert country of origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products:

 (Insert line item number)

 (Insert country of origin)

(iii) The following supplies are other foreign end products including end products manufactured in the United States that do not qualify as domestic end products:

 (Insert line item number)

 (Insert country of origin (if known))

**(h) CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY FOR AWARD
(EXECUTIVE ORDER 12549).**

The offeror certifies, to the best of its knowledge and belief, that--

(1) The offeror and/or any of its principals

☐ are
☐ are not

presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

(2) ☐ have or
☐ have not,

within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

☐ are or
☐ are not

presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses.

**(i) CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS
(EXECUTIVE ORDER 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]**

(1) List End Product.

<div>(Insert end product)</div>	<div>(Insert country of origin)</div>
<div>(Insert end product)</div>	<div>(Insert country of origin)</div>
<div>(Insert end product)</div>	<div>(Insert country of origin)</div>
<div>(Insert end product)</div>	<div>(Insert country of origin)</div>
<div>(Insert end product)</div>	<div>(Insert country of origin)</div>

(2) CERTIFICATION. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) ☐ The offeror will not supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) ☐ The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) (1) **ANNUAL REPRESENTATIONS AND CERTIFICATIONS.** Any changes provided by the offeror in paragraph (j) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for paragraphs _____.

(FAR 52.212-3/Alternates I/II)

K1.05 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (NOV 1995)

(a) **DEFINITIONS.** As used in this clause--

(1) **Foreign person** means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) **United States person** is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) **CERTIFICATION.** By submitting this offer, the offeror, if a foreign person, company, or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(DFARS 252.212-7000, tailored)

K5 USE OF ELECTRONIC DATA INTERCHANGE (DESC MAY 1994)

(a) **DEFINITIONS.**

(1) **Electronic Data Interchange (EDI)** means the computer-to-computer exchange of business documents between trading partners using a public standard format.

(2) **American National Standards Institute (ANSI)** means the agency that formulates the guidelines for the standards used in EDI transactions. X12 is the ANSI subcommittee responsible for the development and maintenance of guidelines for use in exchanging standard business transactions electronically.

(3) **Trading partner** means any business customer engaging in an EDI program.

(4) **Trading Partner Agreement (TPA)** means the legal document wherein the trading partners agree to the electronic exchange of documents.

(5) **Value Added Network (VAN)** means the electronic mailbox through which EDI partners exchange business transactions.

(b) The Defense Energy Support Center (DESC) may utilize EDI for certain documents in contracts awarded under this solicitation. DESC has implemented a system using the (ANSI) X12 standards, as applicable, for EDI. When EDI procedures are to be used, DESC and the Contractor will enter into a TPA.

(c) ☐ A check in this block indicates that the Contractor has already entered into a TPA with DESC.

(d) Upon submission of the following data, DESC will forward a TPA to the Contractor for execution:

(1) Company Name: _____

(2) Point of Contact for EDI: _____

(3) POC's Telephone Number: _____

(4) POC's Address: _____

(5) VAN Service Provider(s): _____

(6) Provide information for the following fields:

ISA07 Company Qualifier _____

ISA08 Company Value _____

GS03 Company Value _____

(7) Please identify:

Element Separator: _____

Subelement Separator: _____

Segment Terminator: _____

(e) By execution of the TPA, the Contractor agrees to be bound by the terms and conditions of the agreement governing any transactions with the Government through EDI, in addition to the terms and conditions of the contract. TPAs will be contract independent. Only one will be signed between the Contractor and DESC. As contracts are awarded, the TPA will be incorporated into the specific contracts upon the mutual agreement of the Contractor and DESC.

(f) When a TPA is executed--

(1) The TPA shall identify, among other things, the VAN(s) through which electronic transmissions are made, the Transaction Sets available, security procedures, and guidelines for implementation.

(2) The Contractor shall be responsible for providing its own computer hardware, computer software, and VAN connections necessary to transmit and receive data electronically under the framework of the TPA.

(3) Transaction Sets will be unique to each contract and will be incorporated into contracts as agreed to by the parties.

(4) Nothing in the TPA will invalidate any part of the contract between the Contractor and DESC.

(5) All terms and conditions that would otherwise be applicable to a paper document shall apply to the electronic document.

(DESC 52.232-9F30)

K15 RELEASE OF UNIT PRICES (DESC MAR 2004)

The Defense Energy Support Center (DESC) will continue to release unit prices of successful offerors after the contract award pursuant to 10 U.S.C. 2305(g)(2), FAR 15.506(d)(2) and 32 CFR 286h-3. Unit prices are the bottom-line price per unit of product and may include the total contract price. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors.

(DESC 52.224-9F25)

K33.01 AUTHORIZED NEGOTIATORS (DESC JAN 1998)

The first page of the offer must show names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate with the Government on the offeror's behalf in connection with this solicitation. The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations.

(DESC 52.215-9F28)

THIS CLAUSE APPLIES ONLY TO DESC-FUNDED ITEMS.

K45.03 FACSIMILE INVOICING (BUNKERS) (DESC AUG 1996)

(a) Submission of invoices by facsimile (FAX) is authorized when the offeror will utilize this method of invoicing at all times. This method shall apply to all ships' bunker payment offices that may receive invoices via facsimile and when other electronic transmission means are not utilized.

(b) Offeror shall indicate whether or not he intends to submit invoices via FAX:

[] YES [] NO

(c) See the SUBMISSION OF INVOICES FOR PAYMENT clause for FAX invoicing procedures.

(DESC 52.232-9F15)

K75 SECONDARY ARAB BOYCOTT OF ISRAEL (APR 2003)

(a) **DEFINITIONS.** As used in this provision--

(1) **Foreign person** means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) **United States person** is defined in 50 U.S.C. App. 2415(2) and means--

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern), and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) **CERTIFICATION.** If the offeror is a foreign person, the offeror certifies by submission of an offer that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(DFARS 252.225-7031)

K85 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) **DEFINITIONS.** As used in this provision--

(1) **Government of a terrorist country** includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) **Terrorist country** means a country determined by the Secretary of State, under Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) **Significant interest**, as used in this provision means--

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) **PROHIBITION ON AWARD.** In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) **DISCLOSURE.**

If the government of a terrorist country has a significant interest in the offeror or a subsidiary of the offeror, the offeror shall disclose such interest in an attachment to its offer. If the offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. The disclosure shall include--

- (1) Identification of each government holding a significant interest; and
- (2) A description of the significant interest held by each Government.

(DFARS 252.209-7001)

K94 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that--
- (i) The Offeror and/or any of its Principals--

- (A) ☐ are,
☐ are not

presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

- (B) ☐ have,
☐ have not

within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

- (C) ☐ are,
☐ are not

presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

- (ii) The Offeror--

- ☐ has,
☐ has not

within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) **Principals**, for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES, AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(FAR 52.209-5)

L2.05-4 INSTRUCTIONS TO OFFERORS – COMMERCIAL ITEMS (BUNKERS) (DESC JAN 2005)

(a) **NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE AND SMALL BUSINESS SIZE STANDARD.** The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern that submits an offer in its own unique name, but proposes to furnish an item it did not manufacture, is 500 employees.

(b) **MASTER SOLICITATION.**

(1) This solicitation is [**X**], is not [] a master solicitation for the **3.7A/C** Purchase Program. If this is a master solicitation, it will contain the terms and conditions for this solicitation and for future supplemental solicitations in the program year. Each supplemental solicitation will incorporate by reference the same terms and conditions as this master solicitation, except as specifically stated in that supplemental solicitation. The identical terms and conditions will not be repeated. (Therefore, if this is a master solicitation, it should be retained for the duration of the program.) However, each supplemental solicitation will be considered a separate and individual solicitation.

(2) The initial closing date for the solicitation is **AUGUST 10, 2005**. Subsequent closings for future requirements will be on an as-required basis starting with the first supplemental solicitation and thereafter until the end of the program ordering period as stated in the solicitation.

(c) **SUBMISSION OF OFFERS.** Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show--

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different from mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3. **See FAR 52.212-3(j) for those representations and certifications that the offeror shall complete electronically;**
- (9) Acknowledgment of solicitation amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.
- (12) Proposals submitted in response to this solicitation shall be in English and in U.S. dollars, unless otherwise permitted by the solicitation.

(d) **FACSIMILE PROPOSALS (FAR 52.215-5).** Incorporated by reference.

(e) **PROPOSAL ACCEPTANCE PERIOD.**

(1) **Acceptance period**, as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of proposals.

(2) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(3) The Government requires a minimum acceptance period of **120** calendar days.

(4) If the offeror specifies an acceptance period which is less than that required by the Government, such offer may be rejected.

(5) The offeror agrees to execute all that it has undertaken to do, in compliance with its offer, if such offer is acceptable to the Government and is accepted within the acceptance period stated in paragraph (3) above or within any extension thereof which has been agreed to by the offeror.

(f) **TYPE OF CONTRACT.** The Government contemplates award of a fixed price with economic price adjustment, requirements-type contract resulting from this solicitation.

(g) **EVIDENCE OF RESPONSIBILITY.** The Contracting Officer may require evidence of supply commitment in the form of either a signed copy of a contract between the offeror and its supplier for each location or a contingency letter from the offeror's intended supplier. Preaward surveys may be performed at the Government's expense to verify these provisions (see FAR 9.106). All offerors will be subject to the criteria set forth in FAR 9.104. Failure to comply with any of the above provisions may result in a determination of nonresponsibility by the Contracting Officer.

(h) **PRODUCT SAMPLES.** When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(i) **MULTIPLE OFFERS.** Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(j) **LATE SUBMISSIONS, MODIFICATIONS, REVISIONS, AND WITHDRAWALS OF OFFERS.**

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2) (i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "**late**" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(k) **CONTRACT AWARD.**

(1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(l) **MULTIPLE AWARDS.** The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than

those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(m) **AVAILABILITY OF REQUIREMENTS DOCUMENTS CITED IN THE SOLICITATION.**

(1) (i) The GSA Index of Federal Specifications, Standards, and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained either through the Defense Standardization Program Internet website at <http://www.dsp.dla.mil> or by submitting a request to--

GSA FEDERAL SUPPLY SERVICE SPECIFICATIONS SECTION
470 EAST L'ENFANT PLAZA SW SUITE 8100
WASHINGTON DC 20407
TELEPHONE: (202) 619-8925
FAX: (202) 619-8978

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the address in (i) above. Additional copies will be issued for a fee.

(2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the--

DEPARTMENT OF DEFENSE SINGLE STOCK POINT (DoDSSP)
BUILDING 4 SECTION D
700 ROBBINS AVENUE
PHILADELPHIA PA 19111-5094
TELEPHONE: (215) 697-2179
FAX: (215) 697-1462

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained--

(A) By telephone at (215) 697-2179; or

(B) Through the DoDSSP Internet site at <http://assist.daps.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(n) **DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER.** (Applies to offers exceeding \$25,000 and offers of \$25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://www.dnb.com>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number.

(o) **CENTRAL CONTRACTOR REGISTRATION (CCR).** Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered offeror. Offerors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(p) **DEBRIEFING.** If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award.

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(FAR 52.212-1, **tailored**/DESC 52.212-9F10)**L2.05-8 INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION (ALTERNATE I) (JAN 2004/OCT 1997)****(a) DEFINITIONS.** As used in this provision--

(1) **Discussions** are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

(2) **In writing, writing, or written** means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

(3) **Proposal modification** is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

(4) **Proposal revision** is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

(5) **Time**, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturday, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) **AMENDMENTS TO SOLICITATIONS.** If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF PROPOSALS.

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals, and modifications to proposals shall be submitted in paper media in sealed envelopes or packages—

(i) Addressed to the office specified in the solicitation; and

(ii) Showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the prices set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic address if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, revision, and withdrawal of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii) (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "**late**" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, or

It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government

requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposal in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, FACSIMILE PROPOSALS. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, EVALUATION OF FOREIGN CURRENCY OFFERS, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) **OFFER EXPIRATION DATE.** Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) **RESTRICTION ON DISCLOSURE AND USE OF DATA.** Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend:

THIS PROPOSAL INCLUDES DATA THAT SHALL NOT BE DISCLOSED OUTSIDE THE GOVERNMENT AND SHALL NOT BE DUPLICATED, USED, OR DISCLOSED – IN WHOLE OR IN PART – FOR ANY PURPOSE OTHER THAN TO EVALUATE THIS PROPOSAL. IF, HOWEVER, A CONTRACT IS AWARDED TO THIS OFFEROR AS A RESULT OF – OR IN CONNECTION WITH – THE SUBMISSION OF THIS DATA, THE GOVERNMENT SHALL HAVE THE RIGHT TO DUPLICATE, USE, OR DISCLOSE THE DATA TO THE EXTENT PROVIDED IN THE RESULTING CONTRACT. THIS RESTRICTION DOES NOT LIMIT THE GOVERNMENT’S RIGHT TO USE INFORMATION CONTAINED IN THIS DATA IF IT IS OBTAINED FROM ANOTHER SOURCE WITHOUT RESTRICTION. THE DATA SUBJECT TO THIS RESTRICTION ARE CONTAINED IN SHEETS (INSERT NUMBERS OR OTHER IDENTIFICATION OF SHEETS); and

(2) Mark each sheet of data it wishes to restrict with the following legend:

USE OR DISCLOSURE OF DATA CONTAINED ON THIS SHEET IS SUBJECT TO THE RESTRICTION ON THE TITLE PAGE OF THIS PROPOSAL.

(f) **CONTRACT AWARD.**

(1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government’s interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror’s initial proposal should contain the offeror’s best terms from a price and technical standpoint.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government’s best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more

contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

- (i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.
- (ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
- (iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (iv) A summary of the rationale for award.
- (v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(FAR 52.215-1/Alternate I)

L2.05-9 INSTRUCTIONS TO OFFERORS – COMPETITIVE ACQUISITION (JAN 2004)

(a) **DEFINITIONS.** As used in this provision--

(1) **Discussions** are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

(2) **In writing, writing, or written** means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

(3) **Proposal modification** is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

(4) **Proposal revision** is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

(5) **Time**, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturday, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) **AMENDMENTS TO SOLICITATIONS.** If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) **SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF PROPOSALS.**

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals, and modifications to proposals shall be submitted in paper media in sealed envelopes or packages—

- (i) Addressed to the office specified in the solicitation; and
- (ii) Showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

- (i) The solicitation number;
- (ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
- (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the prices set opposite each item;
- (iv) Names, titles, and telephone and facsimile numbers (and electronic address if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and
- (v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) **Submission, modification, revision, and withdrawal of proposals.**

(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii) (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "**late**" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, or

It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposal in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, FACSIMILE PROPOSALS. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, EVALUATION OF FOREIGN CURRENCY OFFERS, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) **OFFER EXPIRATION DATE.** Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) **RESTRICTION ON DISCLOSURE AND USE OF DATA.** Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend:

THIS PROPOSAL INCLUDES DATA THAT SHALL NOT BE DISCLOSED OUTSIDE THE GOVERNMENT AND SHALL NOT BE DUPLICATED, USED, OR DISCLOSED – IN WHOLE OR IN PART – FOR ANY PURPOSE OTHER THAN TO EVALUATE THIS PROPOSAL. IF, HOWEVER, A CONTRACT IS AWARDED TO THIS OFFEROR AS A RESULT OF – OR IN CONNECTION WITH – THE SUBMISSION OF THIS DATA, THE GOVERNMENT SHALL HAVE THE RIGHT TO DUPLICATE, USE, OR DISCLOSE THE DATA TO THE EXTENT PROVIDED IN THE RESULTING CONTRACT. THIS RESTRICTION DOES NOT LIMIT THE GOVERNMENT'S RIGHT TO USE INFORMATION CONTAINED IN THIS DATA IF IT IS OBTAINED FROM ANOTHER SOURCE WITHOUT RESTRICTION. THE DATA SUBJECT TO THIS RESTRICTION ARE CONTAINED IN SHEETS (INSERT NUMBERS OR OTHER IDENTIFICATION OF SHEETS); and

(2) Mark each sheet of data it wishes to restrict with the following legend:

USE OR DISCLOSURE OF DATA CONTAINED ON THIS SHEET IS SUBJECT TO THE RESTRICTION ON THE TITLE PAGE OF THIS PROPOSAL.

(f) **CONTRACT AWARD.**

(1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(FAR 52.215-1)

L2.10 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(FAR 52.214-34)

L2.10-1 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(FAR 52.214-35)

L2.11-3 FACSIMILE PROPOSALS - COMMERCIAL ITEMS (DESC NOV 1999)

(a) **DEFINITION. Facsimile proposal**, as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document--

(1) The Contracting Officer shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(d) The Government reserves the right to make award solely on the facsimile proposal. However, **if requested to do so by the Contracting Officer**, the offeror agrees to promptly submit the **complete**, original, signed proposal, or a hard copy thereof, to be received within 10 days of the opening date. The Government reserves the right to reject any incomplete proposal.

(e) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment: (703) 767-8506.

(2) The Defense Energy Support Center's receiving equipment is a Panafax UF-880 facsimile machine. The receiving speed coincides with the applicable sending machine. Each FAX is required to include the following information on a cover sheet or at the top of the first page:

TO: (Name and office code, i.e., Mary Smith, DESC-PH)

FROM: (Originator's name, complete company name and address)

Verification number: (Originator phone number and FAX number)

Description: (Solicitation number)

Number of pages:

(f) If the offeror chooses to transmit a facsimile proposal, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

- (1) Receipt of a garbled or incomplete bid.
- (2) Availability or condition of the receiving facsimile equipment.
- (3) Incompatibility between the sending and receiving equipment.
- (4) Delay in transmission or receipt of bid.
- (5) Failure of the bidder to properly identify the bid.
- (6) Illegibility of bid.
- (7) Security of bid data.

(DESC 52.215-9FA6)

L5.01-1 AGENCY PROTESTS (SEP 1999) - DLAD

Companies protesting this procurement may file a protest (1) with the Contracting Officer, (2) with the General Accounting Office, or (3) pursuant to Executive Order No. 12979, with the Agency for a decision by the Activity's Chief of the Contracting Office. Protests filed with the Agency should clearly state that they are an "Agency Level Protest under Executive Order No. 12979." (**NOTE:** DLA procedures for Agency Level Protests filed under Executive Order No. 12979 allow for a higher level decision on the initial protest than would occur with a protest to the Contracting Officer; this process is not an appellate review of a Contracting Officer's decision on a protest previously filed with the Contracting Officer.) Absent a clear indication of the intent to file an agency level protest, protests will be presumed to be protests to the Contracting Officer.

(DLAD 52.233-9000)

L5.05 DISPUTES: AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (JUN 2001) – DLAD

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the Contractor (see FAR 52.233-1), or, for the Agency, by the Contracting Officer, and approved at a level above the Contracting Officer after consultation with the ADR Specialist and with legal counsel (see DLA Directive 5145.1). Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the Contracting Officer before determining ADR to be inappropriate.

(c) If you wish to opt out of this provision, check here [☐]. Alternate wording may be negotiated with the Contracting Officer.

L7 SOCIOECONOMIC PROPOSAL (DESC DEC 2001)

(a) Offerors shall submit a plan that demonstrates their commitment to providing subcontracting opportunities to small businesses and Historically Black Colleges/Universities and Minority Institutions (HBCUs/MIs). All offerors regardless of business size are required to provide socioeconomic commitment. Small businesses will be credited for the dollar value/percentage of the work they perform as if the work were subcontracted to a small business concern. Work performed by a small business in-house shall be identified in the socioeconomic plan.

(b) As part of the plan, the offeror shall include--

(1) A description of the efforts the company will make to ensure that small businesses and/or HBCUs/MIs will have equal opportunity to compete for subcontracts under any resulting contract.

(2) A description of the offeror's current and planned proposed range for services, supplies, and any other support that will be provided by small businesses and/or HBCUs/MIs.

(3) The specific names of subcontractors to the extent they are known.

(4) A description of any future plans the company has for developing additional subcontracting opportunities for small businesses and/or HBCUs/MIs during the contract period.

(5) Identification of the portion of the offeror's proposal, as a percentage of dollars, that will be subcontracted to small businesses and/or HBCUs/MIs.

(6) The type of performance data the offeror would accumulate and provide to the Contracting Officer regarding their support of small businesses and/or HBCUs/MIs during the period of contract performance.

(7) The name and title of the individual principally responsible for ensuring company support to such firms.

(DESC 52.215-9F71)

M19.08 EVALUATION (SHIPS' BUNKERS) (DESC DEC 2003)

(a) The Government will award a contract to the lowest responsible offeror for a particular line item that can meet the terms and conditions of the solicitation/contract. The low offer will be determined by computing the total cost to the Government for the 2-year basic performance period.

(b) **EVALUATION OF OFFERS SUBJECT TO ECONOMIC PRICE ADJUSTMENT.** All offers on an escalated price basis will be subject to all terms and conditions of the applicable ECONOMIC PRICE ADJUSTMENT (EPA) clause. When the Government elects to negotiate the offers, Final Proposal Revisions (FPR) are to be evaluated based on the base reference date designated for use in the EPA clause. If no FPR is submitted, the initial offer will be used as the FPR. For evaluation purposes, the offered unit price(s) will not be updated until after award, regardless of preaward changes in the reference price.

(c) **EVALUATION OF OFFERS WHERE UNCOMMON ESCALATORS ARE USED.** An **uncommon escalator** is defined as an escalation reference that differs from those established by the Government in the EPA clause. Subject uncommon escalator must be based on the same base reference date cited in the solicitation and be an acceptable substitute to the Government.

(1) **FOR EVALUATION PURPOSES ONLY**, an evaluation factor will be applied to the FPR price(s) of those line items for which acceptable uncommon escalators are proposed as a basis for price adjustment. The evaluation formula will establish a commonality among the different supplier postings, Government postings, or reference publications offered in order to ensure that all offerors are evaluated on an equal basis.

(2) **FORMULA.** The evaluated FPR price will be calculated using the following formula:

$$[\text{Evaluated FPR price}] = [\text{FPR price}] - [\text{applicable base reference price as offered}] + [12\text{-month average of an acceptable reference publication as offered}]$$

(3) Evaluated FPR price is used for evaluation purposes only and shall not be used for price adjustment. The FPR price will be used for price adjustment after a contract is awarded.

(4) In the event the Government awards without discussions, the provisions of (2) and (3) above shall apply to the initial offers.

(d) **OVERTIME AND DETENTION.** The Government will not evaluate overtime and detention charges. However, the Government reserves the right to verify charges that are inconsistent with commercial practices and/or that appear excessive or outside of competitive rates. Further, the Government will not pay more in such rates that exceed the rates the Contractor normally charges its commercial customers.

(e) DELIVERY MODE AND SPECIFICS.

(1) Offers received with a different delivery mode or method from that indicated in the solicitation for a particular line item or various items will be considered, provided the offeror clearly indicates, by attachment to the offer, the extent to which its offer differs from the Addendum requirements. If the alternative delivery mode is acceptable to the Government, award will be made to the offeror whose offer represents the best value to the Government, after considering all evaluation factors.

(2) Individual exceptions concerning pumping rates, delivery conveyance capacity, extended order placement, notification of a delivery, and availability of product will be examined on a case-by-case basis but will not be treated as a price determinate factor. If any of the above referenced exceptions are acceptable to the requesting activity, award will be made to the offeror whose offer represents the best value to the Government, after considering all evaluation factors.

(f) EVALUATION ORDER.

(1) Offerors are expected to submit offers in full compliance with all terms and conditions of this solicitation. Any exceptions/deviations to the terms and conditions of this solicitation will result in the Government's determination that either--

(i) The exception/deviation is material enough to warrant rejection of the offer in part or in full; or

(ii) The exception/deviation is acceptable.

(DESC 52.216-9F40)

(b) The offeror should use conversion factors that reflect its product characteristics and submit prices and transportation rates in the requested units. In the event prices or transportation rates are not submitted in the requested units, the following conversion factors based on an assumed density for the product will be used by DESC in the evaluation of the offer.

One Imperial Gallon	=	1.20095 U.S. Gallons at the same temperature
One Liter	=	0.264172 U.S. Gallons at the same temperature
One Cubic Meter (1,000 liters)	=	6.2898 Barrels at the same temperature
One U.S. Barrel	=	42 U.S. Gallons at the same temperature
One Kilometer	=	0.62137 Miles
One Mile	=	1.6093 Kilometers
One Nautical Mile	=	1.15 Statute Miles

INTERMEDIATE FUEL OILS

IFO 60	947.2	17.8	6.651	279.33	1055.74	6.757	283.81
IFO 180	965.3	15.0	6.526	274.09	1035.95	6.630	278.48
IFO 220	967.9	14.6	6.508	273.34	1033.16	6.612	277.72
IFO 380	973.9	13.7	6.468	271.65	1026.68	6.572	276.01

JET FUELS

JP4/JET B	764.6	53.5	8.243	346.22	1307.87	8.376	351.78
JP5	819.9	41.0	7.686	322.80	1219.66	7.809	327.98
JP8/JET A1	805.9	44.0	7.820	328.42	1240.85	7.945	333.69
JET A	814.2	42.2	7.739	325.04	1228.20	7.863	330.26

KEROSINES (ALL)	815.2	42.0	7.730	324.68	1226.69	7.854	329.88
MARINE GAS OIL	839.3	37.0	7.507	315.30	1191.47	7.628	320.36
NAPHTHA	731.1	62.0	8.623	362.16	1367.80	8.761	367.97
NAVAL DISTILLATE FUEL (F76), DFW (F75) AND NAVAL DISTILLATE MIDDLE MILITARY MARINE APPLICATION (LTD)	844.3	36.0	7.463	313.43	1184.41	7.582	318.46

(3) **TABLE III.**

<u>PRODUCT</u>	<u>ASSUMED DENSITY</u> <u>20 deg C/20 deg C</u>		
	<u>g/mL</u>	<u>lb/gal</u>	<u>Kg/gal</u>
FSII DIEGME	1.025	8.561	3.884

(DESC 52.215-9FA1)

ADDENDUM 2

NOTE: Offerors are encouraged to track the proposed base reference price against their fuel costs for a set time to determine if the Government's proposed base reference price coincides with the offeror's cost of product. Base reference prices are used only for price adjustment purposes and are not to be an indicator of the offeror's fuel cost at a specific time period.

B19.19-1 ECONOMIC PRICE ADJUSTMENT - MARKET PRICE INDICATORS (SHIPS' BUNKERS) (DESC AUG 2000)(a) **WARRANTIES.** The Contractor warrants that--

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) **DEFINITIONS.** As used throughout this clause, the term--

(1) **Award price** means the original contract price including incremental pricing grids.

(2) **Reference price** means a market price indicator determined by an independent trade association, governmental body, or other third party and reported or made available in a consistent manner in a publication, electronic data base, or other readily

accessible form. This price may be either a single reference price or a combination of reference prices for price adjustment for individual items by product, market area, and publication as specified in the Table in (f) below. The reference price is derived from quotes, assessments, or sales prices in the market place for one or several items or commodity groups as reported in a consistent manner in a publication, electronic data base, or other readily accessible form.

(i) **Base reference price** means the market price indicator shown in the Table in (f) below and is the reference price from which economic price adjustments are calculated pursuant to this clause. This price will be expressed as **Base Ref. Price** in any price adjustment notification issued through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC**. The **base reference date** annotated in the Table shall remain unchanged throughout the life of the contract.

(ii) **Adjusting reference price** means the market price indicator in effect in the calendar week of the date of delivery, used to determine the change in reference price. In the event one or more applicable reference prices are not (or were not) published on the date shown, then the term **adjusting reference price** means the preselected market price indicator for an item as published on the date nearest in time on or prior to the effective calendar date as expressed in (4) below. It is annotated as **New Ref. Price** in any PA modification issued.

(3) **Current unit price** means the most current price including alpha designated incremental pricing grids in effect for the week that the price adjustment provisions discussed in paragraph (c) below begin. This price, expressed as **Latest Unit Price** in any DESC price adjustment notification issued through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC** shall be the unit price charged to the Government for supplies delivered under the contract.

(4) **Date of delivery** means the date and time product is received by the requesting activity/vessel. This constitutes signature of receipt by the Government representative for the entire delivery. A single delivery that began on one date and ended on another date shall be considered as received on the date of completion annotated by the Government on the bunker delivery document. Excusable delays in delivery shall be handled on a case-by-case basis by the Contracting Officer.

(5) **Calendar week** means a consecutive seven-day period, beginning with whichever day of the week is specified in (c)(1) below.

(c) **ADJUSTMENTS.** Subject to the provisions of this clause, the prices payable hereunder shall be determined by adding to the award price the same number of cents, or fraction thereof, that the reference price increases or decreases, per like unit of measure as the award price. All resultant price adjustments shall be issued via notification through contract modification and/or postings to the DESC web page under the heading **Doing Business with DESC**. This will be executed by the Contracting Officer through weekly price adjustment notifications in accordance with the following:

(1) **DAY OF PUBLICATION.** Except for items employing the publications listed in (i), (ii), and (iii) below, the reference price in effect on the date of delivery shall be that item's preselected reference price published on the **Monday** of the calendar week in which the delivery is made, or, in the event there is no publication in that week, it shall be the item's preselected reference price as last previously published.

NOTE 1: Oil Price Information Services' (OPIS) Petroskan data is dated on a Thursday but is incorporated into the Monday "hard copy" publication. The Monday date of the OPIS average city prices shall preside.

NOTE 2: DESC downloads the electronic versions of the price publications (i.e., Platts, OPIS). Occasionally, a slight discrepancy may be noted between the prices posted on the electronic version and the printed (hard copy) version. In such an event, the prices posted in the electronic version shall prevail.

(i) **PLATT'S BUNKERWIRE AND BUNKERFUELS REPORT.** For items employing Platt's Bunkerwire and Bunker Fuels Report, the reference price in effect on the date of delivery shall be that item's preselected reference price effective (and normally published) on the **Tuesday** of the calendar week in which the delivery is made, or, in the event there is no publication on Tuesday of that week, it shall be the item's preselected reference price as last previously published.

(ii) **PLATT'S OILGRAM PRICE REPORT.** For items employing Platt's Oilgram Price Report, Spot Price Assessment, the reference price in effect on the date of delivery shall be that item's preselected reference price officially published on the Tuesday, normally effective on the prior Monday, of the calendar week in which the delivery is made, or, in the event there is no publication on Tuesday of that week, it shall be the item's preselected reference price as last previously published. For items employing Platt's Oilgram Price Report, 5 Day Rolling Average, the reference price in effect on the date of delivery shall be that item's preselected reference price published for 5 days ending Friday prior to the calendar week in which the delivery is made.

(iii) When a combination of two different publications is utilized, the **Monday** date of the calendar week shall control if differing published dates are used.

(2) **CALCULATIONS.**

(i) If averages are published within a given publication, then these averages will be used.

(ii) For prices in U.S. gallons, if averages are not available within a given publication, manually calculated averages, carried to six decimal places, truncated, will be used. For prices in metric tons, if averages are not available within a given publication, manually calculated averages, carried to two decimal places, truncated, will be used. For domestic contract line items, conversions from metric tons to gallons shall be utilized through the CONVERSION FACTORS clause for the applicable publication

reference product. Barrels shall be converted using the CONVERSION FACTORS clause for barrels to gallons. The above shall apply unless cited differently in the Table in (f) below.

(iii) For domestic contract line items, the final calculated reference price, as well as any intermediary arithmetical calculations, will consist of a number including six decimal places, truncated. For overseas contract line items, the final calculated reference price, as well as any intermediary arithmetical calculations, will consist of a number including two decimal places, truncated.

(iv) For domestic contract line items, the final adjusted unit price will always consist of a number including six decimal places, truncated. For overseas contract line items, the final adjusted unit price will always consist of a number including two decimal places, truncated.

(v) In the event a known applicable tax change occurs, the Government will automatically adjust via contract modification said increase or decrease to the Contractor's escalated contract price, effective on the date said increase or decrease occurred.

(3) **FAILURE TO DELIVER.** Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract, or is the result of an allocation made in accordance with the terms of the ALLOCATION clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(4) **UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENTS.** The Contractor agrees that the total increase in any contract unit price shall not exceed 60% percent of the award price in any applicable program year (whether a single year or a multiyear program), except as provided hereafter:

(i) If, at any time, the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(5) **REVISION OF REFERENCE PRICE .** In the event--

(i) Any applicable reference price (market price indicator) is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the reference price consistently and substantially fails to reflect market conditions--

the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on or just prior to the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of the contract.

(d) **EXAMINATION OF RECORDS.** The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) **FINAL INVOICE.** The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(f) **TABLE.** The following publication(s)/date(s) apply:

Purchase Program 3.7A&C Northern Domestic:

NOTE: Offerors are encouraged to track the proposed base reference price against their fuel costs for a set time to determine if the Government's proposed base reference price coincides with the offeror's cost of product. Base reference prices are used only for price adjustment purposes and are not to be an indicator of the offeror's fuel cost at a specific time period.
(DESC 52.216-9FS1)

(a) **WARRANTIES.** The Contractor warrants that--

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) **DEFINITIONS.** As used throughout this clause, the term--

(1) **Award price** means the original contract price including incremental pricing grids.

(2) **Reference price** means a market price indicator determined by an independent trade association, governmental body, or other third party and reported or made available in a consistent manner in a publication, electronic data base, or other readily accessible form. This price may be either a single reference price or a combination of reference prices for price adjustment for individual items by product, market area, and publication as specified in the Table in (f) below. The reference price is derived from quotes, assessments, or sales prices in the market place for one or several items or commodity groups as reported in a consistent manner in a publication, electronic data base, or other readily accessible form.

(i) **Base reference price** means the market price indicator shown in the Table in (f) below and is the reference price from which economic price adjustments are calculated pursuant to this clause. This price will be expressed as **Base Ref. Price** in any price adjustment notification issued through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC**. The **base reference date** annotated in the Table shall remain unchanged throughout the life of the contract.

(ii) **Adjusting reference price** means the market price indicator in effect in the calendar week of the date of delivery, used to determine the change in reference price. In the event one or more applicable reference prices are not (or were not) published on the date shown, then the term **adjusting reference price** means the preselected market price indicator for an item as published on the date nearest in time on or prior to the effective calendar date as expressed in (4) below. It is annotated as **New Ref. Price** in any PA modification issued.

(3) **Current unit price** means the most current price including alpha designated incremental pricing grids in effect for the week that the price adjustment provisions discussed in paragraph (c) below begin. This price, expressed as **Latest Unit Price** in any DESC price adjustment notification issued through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC** shall be the unit price charged to the Government for supplies delivered under the contract.

(4) **Date of delivery** means the date and time product is received by the requesting activity/vessel. This constitutes signature of receipt by the Government representative for the entire delivery. A single delivery that began on one date and ended on another date shall be considered as received on the date of completion as annotated by the Government on the bunker delivery document. Excusable delays in delivery shall be handled on a case-by-case basis by the Contracting Officer.

(5) **Calendar week** means a consecutive seven-day period, beginning with whichever day of the week is specified in (c)(1) below.

(c) **ADJUSTMENTS.** Subject to the provisions of this clause, the prices payable hereunder shall be determined by adding to the award price the same number of cents, or fraction thereof, that the reference price increases or decreases, per like unit of measure as the award price. All resultant price adjustments shall be issued via notification through contract modification and/or postings to the DESC web page under the heading **Doing Business with DESC**. This will be executed by the Contracting Officer through weekly price adjustment notifications in accordance with the following:

(1) **DAY OF PUBLICATION.** Except for items employing the publications listed in (i), (ii), and (iii) below, the reference price in effect on the date of delivery shall be that item's preselected reference price published on the **Monday** of the calendar week in which the delivery is made, or, in the event there is no publication in that week, it shall be the item's preselected reference price as last previously published.

NOTE 1: Oil Price Information Services' (OPIS) Petroskan data is dated on a Thursday but is incorporated into the Monday "hard copy" publication. The Monday date of the OPIS average city prices shall preside.

NOTE 2: DESC downloads the electronic versions of the price publications (i.e., Platts, OPIS). Occasionally, a slight discrepancy may be noted between the prices posted on the electronic version and the printed (hard copy) version. In such an event, the prices posted in the electronic version shall prevail.

(i) **PLATT'S BUNKERWIRE AND BUNKERFUELS REPORT.** For items employing Platt's Bunkerwire and Bunker Fuels Report, the reference price in effect on the date of delivery shall be that item's preselected reference price effective (and normally published) on the **Tuesday** of the calendar week in which the delivery is made, or, in the event there is no publication on Tuesday of that week, it shall be the item's preselected reference price as last previously published.

(ii) **PLATT'S OILGRAM PRICE REPORT.** For items employing Platt's Oilgram Price Report, Spot Price Assessment, the reference price in effect on the date of delivery shall be that item's preselected reference price officially published on the Tuesday, normally effective on the prior Monday, of the calendar week in which the delivery is made, or, in the event there is no publication on Tuesday of that week, it shall be the item's preselected reference price as last previously published. For items employing Platt's Oilgram Price Report, 5 Day Rolling Average, the reference price in effect on the date of delivery shall be that item's preselected reference price published for 5 days ending Friday prior to the calendar week in which the delivery is made.

(iii) When a combination of two different publications is utilized, the **Monday** date of the calendar week shall control if differing published dates are used.

(2) **CALCULATIONS.**

(i) If averages are published within a given publication, then these averages will be used.

(ii) For prices in U.S. gallons, if averages are not available within a given publication, manually calculated averages, carried to six decimal places, truncated, will be used. For prices in metric tons, if averages are not available within a given publication, manually calculated averages, carried to two decimal places, truncated, will be used. For domestic contract line items, conversions from metric tons to gallons shall be utilized through the CONVERSION FACTORS clause for the applicable publication reference product. Barrels shall be converted using the CONVERSION FACTORS clause for barrels to gallons. The above shall apply unless cited differently in the Table in (f) below.

(iii) For domestic contract line items, the final calculated reference price, as well as any intermediary arithmetical calculations, will consist of a number including six decimal places, truncated. For overseas contract line items, the final calculated reference price, as well as any intermediary arithmetical calculations, will consist of a number including two decimal places, truncated.

(iv) For domestic contract line items, the final adjusted unit price will always consist of a number including six decimal places, truncated. For overseas contract line items, the final adjusted unit price will always consist of a number including two decimal places, truncated.

(v) In the event a known applicable tax change occurs, the Government will automatically adjust via contract modification said increase or decrease to the Contractor's escalated contract price, effective on the date said increase or decrease occurred.

(3) **FAILURE TO DELIVER.** Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract, or is the result of an allocation made in accordance with the terms of the ALLOCATION clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(4) **UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENTS.** The Contractor agrees that the total increase in any contract unit price shall not exceed ____ percent of the award price in any applicable program year (whether a single year or a multiyear program), except as provided hereafter:

(i) If, at any time, the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(5) **REVISION OF REFERENCE PRICE .** In the event--

(i) Any applicable reference price (market price indicator) is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the reference price consistently and substantially fails to reflect market conditions--
the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on or just prior to the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of the contract.

(d) **EXAMINATION OF RECORDS.** The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) **FINAL INVOICE.** The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(f) **TABLE.** The following publication(s)/date(s) apply:

NOTE TO BUYER: - select one of the following choices:

(1) Insert the following table when the solicitation does **not** contain numerous items:

ITEM NO.	CITY	STATE	RECOMMENDED EPA REFERENCE	BASE REFERENCE DATE	BASE REFERENCE PRICE
165-75	Anchorage	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
170-75	Anchorage	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
203-75	Anchorage	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
237-75	Cordova	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
200-75	Dutch Harbor	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
210-75	Homer	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
211-75	Homer	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
213-34	Juneau	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
213-75	Juneau	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
214-75	Juneau	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
223-75	Juneau	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
212-75	Juneau	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
217-75	Dubuque	IA	OPIS Iowa City, Low Sulfur #2	5/30/05	\$1.5554
225-75	Ketchikan	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
226-34	Ketchikan	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
226-75	Ketchikan	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
451-75	Kodiak	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
452-75	Kodiak	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
452-751	Kodiak	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
452-752	Kodiak	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
240-75	Petersburg	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
250-75	Seward	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
245-75	Sitka	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
435-75	Valdez	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
566-75	Pago Pago	AS	Platts Oilgram Price Report, Singapore, Gasoil .5%S, Previous Week Average	5/30/05	\$590713
380-75	Barrow	AK	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
300-75	Eureka	CA	OPIS Eureka, CARB #2		\$1.6647
515-75	Oxnard	CA	Platts Bunkerwire, Los Angeles, Diesel	5/31/05	\$1.5668
812-98	Oxnard	CA	Platts Bunkerwire , Los Angeles, IFO 180	5/31/05	\$1.0325
818-75	San Diego	CA	OPIS San Diego, CARB #2	5/30/05	\$1.612
818-96	San Diego	CA	Platts Bunkerwire, Los Angeles, IFO 380	5/31/05	\$9387
816-96	San Francisco	CA	Platts Bunkerwire, San Francisco, Bunker C	5/31/05	\$9313
315-75	San Francisco	CA	Platts Bunkerwire, San Francisco, Diesel	5/31/05	\$1.6889
320-75	San Francisco	CA	Platts Bunkerwire, San Francisco, Diesel San Francisco	5/31/05	\$1.6889

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820-75	San Pedro	CA	Platts Bunkerwire , Los Angeles, Diesel	5/31/05	\$1.5668
310-75	Hilo	HI	Platts West Coast Waterborne, Gasoil .05%S, Previous Week Average	5/30/05	\$.6325
420-75	Honolulu	HI	Platts West Coast Waterborne, Gasoil .05%S, Previous Week Average	5/30/05	\$.6325
358-75	Nawiliwili	HI	Platts West Coast Waterborne, Gasoil .05%S, Previous Week Average	5/30/05	\$.6325
835-75	Boston	MA	OPIS Boston, High Sulfur #2	5/30/05	\$1.4741
ITEM NO.	CITY	STATE	RECOMMENDED EPA REFERENCE	BASE REFERENCE DATE	BASE REFERENCE PRICE
835-751	Boston	MA	OPIS Boston, High Sulfur #2	5/30/05	\$1.4741
230-75	New Bedford	MA	OPIS Boston, High Sulfur #2	5/30/05	\$1.4741
296-75	Woods Hole	MA	OPIS Boston, High Sulfur #2	5/30/05	\$1.4741
532-75	Annapolis	MD	OPIS Baltimore, High Sulfur #2	5/30/05	\$1.4657
118-34	Baltimore	MD	OPIS Baltimore, Low Sulfur #2	5/30/05	\$1.4657
255-34	Baltimore	MD	OPIS Baltimore, High Sulfur #2	5/30/05	\$1.4657
836-75	Baltimore	MD	OPIS Baltimore, High Sulfur #2	5/30/05	\$1.4657
295-75	Portland	ME	OPIS Portland, High Sulfur #2	5/30/05	\$1.4843
227-75	Rockland	ME	OPIS Portland, High Sulfur #2	5/30/05	\$1.4843
228-75	South Portland	ME	OPIS Portland, High Sulfur #2	5/30/05	\$1.4843
202-75	Charlevoix	MI	OPIS Traverse City, Low Sulfur #2	5/30/05	\$1.6213
292-75	Cheboygan	MI	OPIS Cheboygan, Low Sulfur #2	5/30/05	\$1.6203
204-75	Detroit	MI	OPIS Detroit, High Sulfur #2	5/30/05	\$1.5298
207-75	Port Huron	MI	OPIS Detroit, High Sulfur #2	5/30/05	\$1.5298
201-75	Roger City	MI	OPIS Cheboygan, Low Sulfur #2	5/30/05	\$1.6203
208-75	Sault Ste. Marie	MI	OPIS Cheboygan, Low Sulfur #2	5/30/05	\$1.6203
291-75	St. Ignace	MI	OPIS Cheboygan, Low Sulfur #2	5/30/05	\$1.6203
205-75	Duluth	MN	OPIS Duluth, Low Sulfur #2	5/30/05	\$1.5586
121-34	Cape Girardeau	MO	OPIS Cape Girardeau, High Sulfur #2 w/ lubricity	5/30/05	\$1.528
126-34	St. Louis	MO	OPIS St Louis, High Sulfur #2 w/ lubricity	5/30/05	\$1.4764
840-75	Newington	NH	OPIS Newington, High Sulfur #2 w/ lubricity	5/30/05	\$1.4758
293-75	Bayonne	NJ	Platts Bunkerwire, New York, Diesel	5/31/05	\$1.6254
294-75	Cape May	NJ	Platts Bunkerwire, Philadelphia, Diesel	5/31/05	\$1.6572
216-75	Highlands	NJ	Platts Bunkerwire, New York, Diesel	5/31/05	\$1.6254
297-75	Cleveland	OH	OPIS Cleveland, High Sulfur #2	5/30/05	\$1.5163
131-75	Astoria	OR	Platts Bunkerwire, Portland, Diesel	5/31/05	\$1.8998
335-75	Astoria	OR	Platts Bunkerwire, Portland, Diesel	5/31/05	\$1.8998
336-75	Astoria	OR	Platts Bunkerwire, Portland, Diesel	5/31/05	\$1.8998
132-75	Astoria	OR	Platts Bunkerwire, Portland, Diesel	5/31/05	\$1.8998
340-75	Coos Bay	OR	OPIS Eugene, High Sulfur #2	5/30/05	\$1.5243
341-75	Coos Bay	OR	OPIS Eugene, High Sulfur #2	5/30/05	\$1.5243
142-75	Newport	OR	Platts Bunkerwire, Portland, Diesel	5/31/05	\$1.8998
140-75	Portland	OR	Platts Bunkerwire, Portland, Diesel	5/31/05	\$1.8998
141-75	Portland	OR	Platts Bunkerwire, Portland, Diesel	5/31/05	\$1.8998
143-75	Portland	OR	Platts Bunkerwire, Portland, Diesel	5/31/05	\$1.8998
145-75	McKees Rock	PA	OPIS Pittsburgh, High Sulfur #2		\$1.4996
556-75	Philadelphia	PA	Platts Bunkerwire, Philadelphia, Diesel	5/31/05	\$1.6572
558-75	Pittsburgh	PA	OPIS Pittsburgh, High Sulfur #2	5/30/05	\$1.4996
211-75	Newport	RI	OPIS Providence, High Sulfur #2	5/30/05	\$1.4749
535-75	Newport	RI	OPIS Providence, High Sulfur #2	5/30/05	\$1.4749

855-75	Norfolk	VA	Platts Bunkerwire, Norfolk, Diesel	5/31/05	\$1.6096
855-96	Norfolk	VA	Platts Bunkerwire, Norfolk, IFO 380	5/31/05	\$.9663
852-75	Norfolk	VA	Platts Bunkerwire, Norfolk, Diesel	5/31/05	\$1.6096
150-75	Aberdeen	WA	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
150-751	Aberdeen	WA	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
753-75	Anacortes	WA	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
753-96	Anacortes	WA	Platts Bunkerwire, Seattle, IFO 380	5/31/05	\$.9479
290-75	Port Angeles	WA	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
ITEM NO.	CITY	STATE	RECOMMENDED EPA REFERENCE	BASE REFERENCE DATE	BASE REFERENCE PRICE
298-75	Port Townsend	WA	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8998
298-751	Port Townsend	WA	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
430-751	Seattle	WA	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
430-752	Seattle	WA	Platts Bunkerwire, Seattle, Diesel	5/31/05	\$1.8474
860-96	Tacoma	WA	Platts Bunkerwire, Seattle, IFO 380	5/31/05	\$.9479
350-75	Marinette	WI	OPIS Green Bay, High Sulfur #2	5/30/05	\$1.5163
285-75	Sturgeon Bay	WI	OPIS Green Bay, High Sulfur #2	5/30/05	\$1.5163

provide at time of award

or

(2) (at Contracting Officer's discretion) Insert for Ships' Bunker programs when the solicitation is for a major program buy:

See the EPA clause "Continuation Pages" for (1) a list of applicable publications and effective reference price dates, and (2) market areas and reference publications designated by product, location, and publication reference.

C1 SPECIFICATIONS (DESC JAN 1997)

Product to be supplied shall fully meet the requirements of the applicable specification(s) as indicated in the Supply Schedule, except as modified elsewhere in this contract. Unless otherwise indicated by the Contractor, prior to award and in accordance with the EVALUATION OF OFFERS clause, the product offered will be assumed to fully meet the applicable specification(s).

(DESC 52.246-9FT5)

C3 SPECIFICATIONS/EXCEPTIONS (BUNKERS) (DESC MAR 1996)

(a) Product to be supplied shall fully meet the requirements of the applicable specification(s) as indicated in the Supply Schedule, including amendments thereto. Unless otherwise indicated by the Contractor, prior to award and in accordance with the EVALUATION OF OFFERS clause, the product offered shall be considered to fully meet the applicable specification(s).

(b) If requesting an exception to product requirements in the solicitation, the offeror is requested to provide the following information:

- (1) Offeror name;
- (2) Contract Line Item Number, if applicable;
- (3) Product, if applicable;
- (4) Clause number, paragraph, and subparagraph, as appropriate;
- (5) Nature of request;
- (6) Reason for the request; and
- (7) Corrective action, if appropriate.

(DESC 52.246-9FV1)

C16.23-4 FUEL, NAVAL DISTILLATE (B76) (SHIPS' BUNKERS) (DESC MAR 2004)

Military Specification MIL-PRF-16884K dated November 14, 2002, applies with the following modifications:

(a) **APPEARANCE REQUIREMENT.** The fuel shall be visually clear and bright when tested using ASTM D 4176, procedure 1. If the sample fails ASTM D 4176 (procedure 1), then requirements (procedure 2) may be performed. The product is acceptable if the haze rating is a number 2 maximum.

(b) **ADDITIVES.** The red dye required in off-highway diesel fuel in accordance with the Environmental Protection Agency's (EPA) interim final rule published in the Federal Register dated July 14, 1994, **shall** be added to B76 containing more than 0.05 percent sulfur. The ASTM D 1500 color test requirement is deleted **if** red dye has been added in compliance with U.S. EPA requirements; however, the resulting fuel dye blend must have a red tint. It shall not be visually brown or darker in appearance.

(c) **TESTING.** The requirements in TABLE I for storage stability testing and hydrogen content testing are deleted.

(d) **REPORTS.** A copy of the latest full specification analysis shall be submitted for each tank of product lifted. This documentation shall be submitted to the following address:

NAVAL OPERATIONAL LOGISTICS SUPPORT CENTER
8725 JOHN J KINGMAN ROAD SUITE 3719
FORT BELVOIR VA 22060-6224

(DESC 52.246-9FBK)

C16.23-6 FUEL, NAVAL DISTILLATE, MIDDLE – MILITARY MARINE APPLICATIONS (DESC NOV 2004)

Supplies delivered under this contract shall conform to all Federal, State, and local environmental requirements applicable to the geographic location of the receiving activity on the date of delivery. The Contractor shall be responsible for determining the existence of all such requirements at the time deliveries are made. In the event that a Federal, State, or local environmental requirement is more stringent than a requirement contained in this contract, the Contractor shall deliver product that complies with the more stringent requirement. Product that fails to meet the more stringent requirement will be considered to be a nonconforming supply. Product(s) to be supplied shall fully meet the requirements of the applicable specification(s) as cited below.

Offered product shall conform to ASTM D 6985, Middle Distillate Fuel Oil – Military Marine Applications, except as modified below.

(a) If the cetane number or index is reported, the reported value shall apply to the base fuel without cetane improving additives. Alternate test method ASTM D 4737 for cetane index is deleted.

(b) Test method ASTM D 6371 or IP 309 for cold filter plugging point (pass/fail) is acceptable with the following modification: "Apply vacuum to the sample for the first time when the fuel sample temperature reaches -1 degree Celsius. If the time required for the 20 milliliter of fuel to be filtered through the wire mesh filter exceed 60 seconds, record the test result as a failure. If the time required for the 20 milliliter sample to flow through the filter is 60 seconds or less, record the test result as a pass. Do not repeat application of vacuum at successively lower temperatures. This is a modification of the requirement of ASTM D 6371 (IP 309) that the vacuum be applied to the test specimen immediately after the test jar is inserted into the cooling jacket or, at a minimum, when the fuel is at least 5 degrees Celsius above its cloud point.

(c) The flash point value is absolute and no value less than 60 degrees Celsius is permissible.

(d) For cloud point, ASTM D 5771, ASTM D 5772, ASTM D 5773, or ASTM D 3117 may be used as alternates. ASTM D 2500 shall be the referee method.

(e) For deliveries outside the United States, the offerors must submit information on the composition, color and desired concentration of any dye to be used in order to obtain approval.

(f) For carbon residue on 10 percent bottoms, ASTM D 189, at a maximum limit of 0.14 mass percent, is an acceptable alternate method.

(g) Density at 15 degrees Celsius shall be reported. ASTM D 4052 may be used as an alternate test method.

(h) The requirement for distillation by ASTM D 86 is added. Specifically, the requirement to report the 50 percent recovered temperature and a 90 percent maximum of 357 degrees Celsius is added.

(i) REDUCED SULFUR REQUIREMENT FOR EUROPEAN UNION PORTS.

(1) In support of European Commission Directive 99/32/EC, "Sulphur Provisions for Marine Gas Oils (MGO)", **MGO** delivered in European union ports under this contract shall contain no more than 0.20 mass percent maximum sulfur.

(2) Specific ports where DESC requires low sulfur MGO include, but are not limited to: Algeciras, Spain; Alicante, Spain; Antwerp, Belgium; August Bay, Italy; Barcelona; Spain; Bremerhaven/Nordenham, Germany; Cagliari, Italy; Cartagena, Spain; Catania, Italy; Genoa, Italy; Gibraltar, United Kingdom; La Maddalena, Italy; Killingholme, United Kingdom; Lisbon, Portugal; Livorno, Italy; Malaga, Spain; Marseilles, France; Naples, Italy; Palma de Mallorca, Spain; Portland, United Kingdom; Rotterdam, Netherlands; Southampton, United Kingdom; Toulon, France; and Trieste, Italy.

(DESC 52.246-9FBL)

C16.26-11 ARMY DIESEL FUEL REQUIREMENTS FOR HIGH SULFUR AND LOW SULFUR SHIPS' BUNKERS (DESC MAR 2003)

(a) Any reference to **ASTM** in this clause means the latest revision thereof, as set forth in the DODISS SPECIFICATIONS clause.

(b) **CLASSIFICATION.**

<u>NATIONAL STOCK NUMBER</u>	<u>PRODUCT NOMENCLATURE</u>	<u>DESC PRODUCT CODE</u>	<u>MAXIMUM SULFUR CONTENT</u>	<u>RED DYE</u>
9140-01-456-9443	Grade No. 2-D	DF2	0.50 wt%	Yes
9140-01-413-7511	Grade Low Sulfur, No. 2-D	DLS	0.05 wt%	Yes

(c) **REQUIREMENTS.** The diesel fuel oil shall meet the physical and chemical requirements of ASTM D 975, with the following exceptions:

(1) The maximum cloud point shall be equal to or lower than the tenth percentile minimum ambient temperature for the area in which ambient temperatures for U.S. locations are shown in Appendix X4 of ASTM D 975.

(2) Total particulate level as measured by ASTM D 6217 shall not exceed 10 mg/L.

(d) **RED DYE.** The Internal Revenue Service requires that a red dye, identified as Solvent Red 164 (alkyl derivatives of azo benzene azo naphtho), must be added to all nontaxable diesel fuel as a means of identification. The minimum concentration is provided in 40 CFR Part 80.

(DESC 52.246-9FAW)

C36 FUEL OIL, INTERMEDIATE, GRADES RME-25 (IFO 180) AND RMG-35 (IFO 380) (DESC JUN 2004)

(a) Product shall conform to ISO 8217:1996.

(b) **ALTERNATE TEST METHODS.** The test methods below can also be used to determine the following requirements:

REQUIREMENTS

TEST METHOD

Density @ 15°C, kg/m³

ASTM D 4052

Carbon Residue

ASTM D 4530

Vanadium, mg/kg

ASTM D 5863

Aluminum plus silicon, mg/kg

ASTM D 5184

(c) **SULFUR.** Starting May 19, 2005, the sulfur limit for RME-25 (IFO 180) and RMG-35 (IFO 380) must meet a sulfur limit of 4.5 weight percent, maximum.

(d) **FOR THE BULK PROGRAM.** RME-25 (IFO 180) purchased under the DESC Bulk Purchase Program must meet a revised sulfur weight percent limit of 3.5, maximum.

(DESC 52.246-9FFE)

E5.01 INSPECTION AND ACCEPTANCE OF SUPPLIES (SHIPS' BUNKERS) (DESC MAY 2001)

(a) **INSPECTION.**

(1) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government, for acceptance, only supplies that have been found by the Contractor to be in conformity with contract requirements. A system meeting International Organization for Standardization (ISO) 9001 or 9002 Quality Systems series documents is an acceptable inspection system. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract delivery. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(2) The Government has the right to inspect and/or test all supplies called for by the contract.. Unless otherwise noted, inspection will be performed by the receiving activity based on documents required to be supplied by the Contractor at the time of delivery. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(3) The Government may require the Contractor to provide the following types of samples of product being supplied under each line item under this contract, free of cost to the Government, to a testing location to be identified at the time of the request. Any testing performed would be at the expense of the Government.

(i) A one-gallon sample of fuel being delivered under each line item under the contract. Requests for this type of sample shall be limited to no more than one per month (per line item) during the life of the contract.

(ii) A five-gallon sample for each line item shall be requested for purposes of gathering data on world-wide bunker quality. This request would be limited to no more than twice (per line item) per contract period and shipped to the following address when requested:

ATTN: AIR 4.4.5 FUEL SAMPLE
NAVAL AIR STATION PATUXENT RIVER
HAZMART BUILDING 2385
22680 HAMMOND ROAD
PATUXENT RIVER, MD 20670-1534

(4) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(5) The Government may perform quality validation on samples taken at the point of acceptance, i.e., ships' manifold. One representative sample will be taken and split into three sealed test specimens. One test specimen sample will be offered to the Contractor's representative. One test specimen sample will be submitted to a Government approved laboratory for analysis. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises. In the event the sample test results do not conform to contract specifications, the Government may exercise its post-acceptance rights and direct the Contractor to immediately remove the fuel at the Contractor's expense. Detainment of the Government vessel for the fuel removal will be at the Contractor's expense.

(6) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test. The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(7) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and when the supplies will be ready for Government inspection. The Government's request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(8) A copy of the latest full specification analysis for the shore tank shall be provided to the receiving activity at the time of each delivery. Additionally, when product is supplied by barge, the following analysis results shall be provided on a barge composite sample: Appearance, Color, Density, Distillation, Flash Point, and BS&W.

(b) **ACCEPTANCE.** Acceptance of the supplies furnished hereunder will take place at destination notwithstanding that inspection by the Government may take place elsewhere prior to acceptance.

(c) **SPECIFICATION WAIVERS.**

(1) Requests for waivers and deviations shall be submitted by the Contractor to the Contracting Officer with a copy to the Quality Representative (QR). Each request shall provide the following information:

- (i) Contractor name;
- (ii) Contract number;
- (iii) Contract line item and product, if applicable;
- (iv) Clause number;
- (v) Paragraph and subparagraph, as appropriate;
- (vi) The nature of the request;
- (vii) The reason for the request;
- (viii) The corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and
- (ix) An equitable price adjustment offered over the administrative fee.

(2) In extraordinary situations, the Contractor may initially submit the request for a deviation or waiver through the cognizant QR to the Contracting Officer or the Contracting Officer's Representative (COR) in the Bulk Fuels Business Unit, Product Technical and Standardization Division, Defense Energy Support Center (DESC). Extraordinary situation requests shall be submitted formally to the Contracting Officer prior to close of business of the next DESC normal workday. As used in this clause, the term

extraordinary situation means the matter cannot await resolution until the DESC normal workday (0800 to 1630 hours), Monday through Friday - Federal holidays excluded. In addition, if either the Contracting Officer or the COR cannot be reached, the Duty Officer shall be contacted and provided the necessary information to forward to the proper individuals as soon as possible. **The Duty Officer's telephone number is (800) 286-7633, (703) 767-8420, or (DSN) 427-8420.**

(3) If the waiver is granted, the contract will be modified to provide an equitable price reduction or other adequate consideration commensurate with the waiver being granted. If the situation dictates, a waiver may be granted without prior agreement on price adjustment or other consideration subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such agreement shall be documented on the receiving document or other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of the Disputes section of the CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS clause of this contract.

(4) If the waiver is granted and the nonconforming supplies are accepted, then in no event will consideration be less than \$250 to cover administrative costs, plus any additional cost of Government inspection or tests if reinspection or retest is necessary.

(5) If the waiver is granted modifying this contract but the supplies accepted are nevertheless determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the waiver. If, however, this consideration exceeds \$500, a second contract modification shall be issued reducing the Contractor's obligation to \$500 (the administrative cost of issuing the two required modifications).

(6) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to reject or to require correction under paragraph (a)(5) above, then in no event will consideration be less than \$250 to cover administrative costs. This \$250 fee is in addition to consideration commensurate with the extent of nonconforming supplies; and the cost of Government inspection or tests if reinspection or retest is necessary. The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

(d) SOURCE RESTRICTION.

(1) If the Contractor delivers any product that is determined to be off-specification, the Contracting Officer shall thereafter have the right, upon giving 10 days' written notice, to require the Contractor to designate a single source of supply for each destination where the problem occurs as set forth in the contract. This shall coincide with the inspection procedures identified above.

(2) The Contractor must provide the new address of the terminal or loading point to be used in drawing the requirements for each affected item in the contract in addition to the name of the single source of supply.

(3) When paragraph (d)(1) has been enforced, the Contractor may change suppliers only after requesting and receiving the express written approval of the Contracting Officer. Prior to approval by the Contracting Officer, the Contractor must also submit a supply commitment letter and product specification from any new supplier, and a quality site inspection must be performed.

(DESC 52.246-9F85)

E22 LIST OF INSPECTION OFFICES FOR DESC CONTRACTS (DESC OCT 2004)

The following lists shall be used to identify the Government inspection office assigned inspection responsibility for DESC contracts in a particular geographic area. These contracts include, but are not limited to, those for bulk petroleum products and additives, into-plane refueling, petroleum storage and laboratory services, coal, missile fuels (including compressed gases), and posts, camps, and stations. The area of inspection responsibility and corresponding office code are assigned in paragraphs (a) and (b). The address and phone number of each inspection office by office code is provided in paragraph (c). Unless a particular inspection office is identified in another part of the contract, the assignments in this clause shall apply.

(a) AREAS OF RESPONSIBILITY AND OFFICE CODES WITHIN THE CONTINENTAL UNITED STATES

(CONUS):

Alabama	110	Maine	110	Oklahoma	110
Arizona	120	Maryland	110	Oregon	120
Arkansas	110	Massachusetts	110	Pennsylvania	110
California	120	Michigan	110	Rhode Island	110
Colorado	120	Minnesota	110	South Carolina	110
Connecticut	110	Mississippi	110	South Dakota	110
Delaware	110	Missouri	110	Tennessee	110
District of Columbia	110	Montana	120	Texas	110
Florida	110	Nebraska	110	Utah	120
Georgia	110	Nevada	120	Vermont	110
Idaho	120	New Hampshire	110	Virginia	110
Illinois	110	New Jersey	110	Washington	120

Indiana	110	New Mexico	120	West Virginia	110
Iowa	110	New York	110	Wisconsin	110
Kansas	110	North Carolina	110	Wyoming	120
Kentucky	110	North Dakota	110		
Louisiana	110	Ohio	110		

EXCEPTIONS:

- (1) The El Paso, Texas, area is assigned to Code 120 (DESC Americas – West).
 (2) The Newcastle, Wyoming, area is assigned to Code 110 (DESC Americas – East).

**(b) AREAS OF RESPONSIBILITY AND OFFICE CODES OUTSIDE THE CONTINENTAL UNITED STATES
 (OCONUS) (INCLUDING ALASKA AND HAWAII):**

Afghanistan	400	Djibouti	400	Kyrgyzstan	400	Russia	200
Africa	200 ²	Egypt	400	Laos	350 ¹	Saudi Arabia	400
Alaska	320	Eritrea	400	Lebanon	200	Seychelles Is.	400
Antarctica	310	Ethiopia	400	Madagascar	200	Singapore	350 ¹
Armenia	200	Europe (Continental)	200	Malaysia	350 ¹	Somalia	400
Ascension Island	111	Georgia	200	Maldives	350 ¹	South America	111
Australia	350 ¹	Greenland	200	Malta	200	Sri Lanka	350 ¹
Azerbaijan	200	Hawaiian Islands	310	Mauritius	200	Sudan	400
Azores	200	Hong Kong	330	Mexico	111	Syria	200
Bahrain	400	Iceland	200	Midway Island	310	Taiwan	350 ¹
Bangladesh	350 ¹	India	350 ¹	Mongolia	330	Tajikistan	400
Bermuda	111	Indonesia	350 ¹	Myanmar	350 ¹	Thailand	350 ¹
Bhutan	350 ¹	Ireland	200	Nepal	350 ¹	Turkey	200
Brunei	350 ¹	Iraq	400	New Zealand	350 ¹	Turkmenistan	400
Cambodia	350 ¹	Israel	200	Oman	400	United Arab	
Canada	120	Japan	340	Pacific Islands		Emirates	400
Canary Island	200	Johnston Atoll	310	(Central & South)	310	United Kingdom	200
Caribbean Islands	111	Jordan	400	Pakistan	400	Uzbekistan	400
Central America	111	Kazakhstan	400	Papua New Guinea	310	Vietnam	350 ¹
Chagos Archipelago	300	Kenya	400	Philippines	350 ¹	Wake Island	310
Comoros	200	Korea	330	Qatar	400	Yemen	400
Cyprus	200	Kuwait	400	Ryukus Islands, Japan	340		

^[1] A copy of all documentation related to the inspection of product shipments by DESC Singapore should also be sent to Code 300, DESC Pacific.

^[2] Except for those countries specifically assigned to DESC Middle East in the above list, all other countries in Africa fall under DESC Europe.

(c) INSPECTION OFFICES AND CODES.

110. DESC Americas -- East
 Federal Building, Room 1005
 2320 LaBranch Street
 Houston, TX 77004-1091
 Phone: (713) 718-3883
 FAX: (713) 718-3891

111. DESC Homestead
 360 Coral Sea Blvd.
 Homestead AFB, FL 33039-1299
 Phone: (305) 258-7454/55/56
 FAX: (305) 258-7761

120. DESC Americas -- West
3171 N Gaffey Street
San Pedro, CA 90731-1099
Phone: (310) 900-6960
FAX: (310) 900-6973
200. DESC Europe
ATTN: Quality Manager
CMR 443, Box 5000
APO AE 09096-5000
[Location: Wiesbaden, Germany]
Phone: 49-611-380-7413/7541³
FAX: 49-611-380-7406³
300. DESC Pacific
ATTN: Quality Manager
Building 11
Camp H M Smith, HI 96861
Phone: (808) 477-1173
FAX: (808) 477-5710
310. DESC Middle Pacific
Building 11
Camp H M Smith, HI 96861
Phone: (808) 477-5441
FAX: (808) 477-5710
320. DESC Alaska
10480 22nd Street
Elmendorf AFB, AK 99506-2500
Phone: (907) 552-3949
FAX: (907) 753-0517
330. DESC Korea
Building T-383 (CP OSCAR)
APO AP 96218-0171
[Location: Camp Walker, Taegu, Korea]
Phone: 82-53-470-5204³
FAX: 82-53-470-5103³
340. DESC Japan
Yokota Building 714, Room 211/B-18
Unit 5266
APO AP 96328-5266
[Location: Yokota AB, Japan]
Phone: 81-311-755-2673³
FAX: 81-311-755-3598³

350. DESC Singapore
c/o NRCC Singapore
PSC 470, Box 2100
FPO AP 96534-2100
Phone: 65-6750-2070/2013
FAX: 65-6750-2080/2635

400. DESC Middle East
ATTN: Quality Manager
PSC 451, Box DESC-ME
FPO AP 09834-2800
[Location: Juffair, Bahrain]
Phone: 973-724-650³
FAX: 973-724-670³

^[3] Dial 011 before these numbers when calling from the U.S. When calling these numbers from outside the U.S., use the appropriate international long distance prefix for the country where the call originates.

(DESC 52.246-9F40)

E35 NONCONFORMING SUPPLIES AND SERVICES (DESC JAN 2004)

(a) The Government may, at its discretion, accept nonconforming supplies or services. In such cases, the Contractor must obtain a deviation or waiver from the Contracting Officer prior to acceptance.

(b) The following procedures shall be used to request a deviation or waiver to the applicable nonconformance(s). A deviation is a request by a Contractor to deviate from the contract requirements after contract award, but prior to initial production of each product (for the duration of the contract). A waiver is a request by a Contractor to deviate from the contract requirements after initial production of each product (on a case-by-case basis or for a set period).

(1) Requests for deviations and waivers shall be submitted by the Contractor to the Contracting Officer with a copy to the Quality Representative (QR). Each request shall provide the following information: Contractor name; contract number; contract line item and product, if applicable; clause number, paragraph and subparagraph, as appropriate; the nature of the request; the reason for the request; the corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and equitable price adjustment offered over the administrative fee. In extraordinary situations, the Contractor may initially submit the request for a waiver, not a deviation, through the cognizant QR to the Contracting Officer or the Contracting Officer's Representative (COR) in the Quality Operations Division (DESC-BQ) of the Defense Energy Support Center (DESC). Extraordinary situation requests shall be submitted formally to the Contracting Officer prior to close of business of the next normal DESC workday (0800 to 1630 hours EST, Monday through Friday, Federal Holidays excluded). As used in this clause, the term extraordinary situation means the matter cannot await resolution until the next normal DESC workday. In addition, if either the Contracting Officer or the COR cannot be reached, the Duty Officer shall be contacted and provided the necessary information to forward to the proper individuals as soon as possible. The Duty Officer's telephone number is **(800) 286-7633** or **(703) 767-8420; (DSN) 427-8420**.

(2) If a deviation or waiver is granted, the contract will be modified to provide an equitable price reduction or other adequate consideration commensurate with the deviation or waiver being granted. If the situation dictates, a deviation or waiver may be granted without prior agreement on price adjustment or other consideration subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such agreement shall be documented on the receiving document or other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of the Disputes paragraph of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of this contract.

(3) If a deviation or waiver is granted and the nonconforming supplies are accepted, then in no event will consideration be less than \$250 to cover administrative costs, plus any additional cost of Government reinspection or retest, if necessary.

(4) If a deviation or waiver is granted modifying this contract but the supplies accepted are subsequently determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the deviation or waiver. If, however, this consideration exceeds \$500, a second contract modification shall be issued reducing the Contractor's obligation to \$500 (the administrative cost of issuing the two required modifications).

(c) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to reject or to require correction under the INSPECTION OF SUPPLIES – FIXED-PRICE, INSPECTION AND ACCEPTANCE OF SUPPLIES (SHIPS' BUNKERS), or CONTRACT TERMS AND CONDITIONS –

COMMERCIAL ITEMS clause, then in no event will consideration be less than \$250 to cover administrative costs. This \$250 fee is in addition to—

- (1) Consideration commensurate with the extent of nonconforming supplies; and
- (2) Cost of Government reinspection or retest, if necessary.

The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

(d) Contractors shall be held responsible for payment of any fines or penalties imposed on a receiving activity by an environmental enforcement agency, resulting from the delivery of nonconforming supplies under a DESC contract.

(e) Repeated tender of nonconforming supplies or services, including those with only minor defects, will be discouraged by appropriate actions, including, but not limited to rejecting the supplies or services whenever feasible and documenting the Contractor's performance records.

(DESC 52.246-9FQ5)

F1.01-2-100 BUNKERING PROVISIONS (DESC MAY 2005)

(a) **DEFINITIONS.** The following definitions apply herein:

(1) **BACKHAUL:** Transportation charges associated with returning excess quantities ordered but not taken by the Government to the supply terminal or, if not returnable, incurred demurrage until the product is sold to a third party. Backhaul may also include the difference between the price the Contractor paid for the product and any lower market price actually received by the Contractor in making a good faith effort to mitigate damages by selling the product to a third party.

(2) **DEMURRAGE:** A fee charged for exceeding free time allowed by contract for barge loading or unloading.

(3) **DETENTION:** A fee charged for exceeding free time allowed by contract for vehicle (transport truck, truck and trailer, or tank wagon) loading or unloading.

(b) **DELIVERY CONDITIONS.**

(1) Unless otherwise specified, all items require delivery f.o.b. destination by means of transport truck, truck and trailer, tank wagon, pipeline, or barge under the following conditions:

(i) **DELIVERY BY PIPELINE (ex-pipe at pier or wharf).** Into Government vessel at a pier or wharf where the following conditions can be met: Pier **must** accommodate vessels up to 30 feet in draft, 600 feet in length with a displacement of approximately 9,000 tons. Pier must be serviced by a pipeline capable of delivering bunker fuel into the Government vessel at approximately 2,000 barrels per hour. The Contractor will provide a minimum 100-foot length of 4- to 6-inch hose and line handlers.

(ii) **DELIVERY BY BARGE.** Barge capacity of 2,000 - 5,000 barrels with pump/motor to discharge cargo to the Government vessel at approximately 1,500 to 2,000 barrels per hour. The Contractor must provide a clean barge suitable for loading bunker fuel. The Contractor will provide a minimum 100-foot length of 4- to 6-inch hose. The Contractor shall not be required to provide any additional hose unless requested by the receiving activity and accepted by the Contractor. The Contractor shall not be required to hook up hoses with the receiving conveyance prior to scheduled delivery time. When delivery of residual fuels is by barge, the Contractor may deliver using a heated barge for ease of flow.

(iii) **DELIVERY BY TANK TRUCK, TRUCK AND TRAILER, OR TANK WAGON.** Truck delivery to a berthing pier, provided the berthing pier which must accommodate a Government vessel up to 30 feet in draft, 600 feet in length with a displacement of 9,000 tons. When delivery is made by tank wagon, such wagon shall be equipped with pump, meter, and a minimum of 100 feet (30 meters) of hose. Where delivery is made by transport truck or truck and trailer, such delivery equipment shall be equipped with a minimum of 15 feet of hose. At the Contractor's option, a transport truck may be substituted for items requiring delivery by truck and trailer.

(iv) **CONNECTIONS.** Pump and hose connections to fit requesting vessels shall be provided by the Contractor for each delivery.

(v) **ORDER SIZE CAPACITY.** Ordered delivery quantities may require multiple delivery conveyances and/or return trips at less than a full load to satisfy the Government's requirement.

(2) Unless otherwise specified in the Schedule and/or contract, delivery into Government vessels (to include dredges & barges) by means of transport truck, truck and trailer, tank wagon, or pipeline shall be made at the specific time specified in the order, provided that such order shall have been received by the Contractor at least 24 hours prior to the specific time such delivery is required to be made. Deliveries by barge shall be made at the specific time specified in the order, provided that such order shall have been received by the Contractor at least 48 hours prior to the specific time such delivery is required to be made. However, if an item in the Schedule annotates a specific response/delivery time restriction/requirement, the Schedule shall dictate. Also see the SUPPLIES TO BE FURNISHED (SHIPS' BUNKERS) clause.

(3) The Contractor shall provide properly maintained delivery equipment and properly trained delivery personnel to reasonably assure that delivery can be made without damage to vegetation and asphalt pavement adjacent to vessels being bunkered. The Contractor's delivery personnel who have not exercised reasonable care and delivery equipment which is poorly maintained may be refused entrance to the bunkering location by the installation Commander, the port authorities and/or US Coast Guard. The Contractor shall present delivery equipment and product in such condition at destination so as to permit complete off-loading within the prescribed lay-time and applicable free time. All delivery equipment and personnel must meet all environmental requirements for over water (marine) fuel deliveries. This is to include the requirements to have an approved U.S. Coast Guard Oil Response Plan for domestic ports.

(c) **LOADING TEMPERATURE.** Product offered as bunkers to U.S. Navy and Coast Guard Vessels (excluding those controlled by the Military Sealift Command) shall not exceed 49°C (120°F) temperature at time of delivery. On all other bunkerings the product shall be at least 5.5°C (10°F) below the flash point of the product and in no case higher than 66°C (150°F) if the tanks are uncoated, or 57°C (135°F) if coated; PROVIDED, however, that in no event shall the difference between the temperature of the product entering the tanker manifold and the recorded temperature of the seawater at the tanker's condenser intake exceed 39°C (70°F); PROVIDED, further, that the Master of the vessel may authorize loading the product at a temperature higher than specified above so long as the temperature of the product remains at least 5.5°C (10°F) below the flash point of the product.

(d) **DETERMINATION OF QUANTITY.** The quantity of supplies furnished under this contract shall be determined as follows:

(1) **DELIVERY BY BARGE.** (i) On items delivered by barge, the quantity shall be determined (at the Contractor's option) on the basis of--

(i) **ORIGIN SHORE TANK MEASUREMENTS.** If the vessel is unable to receive any or all of the delivery, the Contractor must immediately notify the DESC Contracting Officer of the circumstances and provide documentation to substantiate the quantity and location where excess product has been off-loaded; or

(ii) **CALIBRATED METER;** or

(iii) **GAUGING** the barge before and after delivery.

(iv) The Government reserves the right to have a representative present to witness the measurement of quantity.

(2) **DELIVERY BY PIPELINE OR FROM MARINE SERVICE STATION INTO VESSEL.** On items delivered by pipeline or from Contractor's marine service station, the quantity shall be determined (at the Contractor's option) on the basis of--

(i) Origin shore tank measurements; or

(ii) Calibrated meter.

(iii) The Government reserves the right to have a representative present to witness the measurement of quantity.

(3) **DELIVERY BY TANK TRUCK/TRUCK AND TRAILER/TANK WAGON INTO VESSEL.** On items delivered by TANK TRUCK/TRUCK AND TRAILER/TANK WAGON, the quantity shall be determined (at the Contractor's option) on the basis of--

(i) Calibrated meter; or

(ii) Certified capacity tables. The tables must be made available at the time of delivery; or

(iii) Certified tank calibration markers. Certified tank calibration markers will not be accepted unless the conveyance is full to the marker and the entire quantity is delivered; or

(iv) The net quantity determined at the loading point by a calibrated loading rack meter or calibrated scales. This quantity must be mechanically imprinted on the loading rack meter ticket that is generated by the loading rack meter or calibrated scales. **If this method is used, the Government reserves the right to determine the quantity received at time of delivery by any means available.**

(v) The Government shall have the right to have a representative present to witness the measurement of quantity.

(vi) In any case, at the Government's option, quantity may be determined at the receiving activity on the basis of--

(A) Weight, using calibrated scales; or

(B) A calibrated meter on the receiving tank system.

(vii) The Contractor has the right to have a representative present to witness the delivery and measurement of quantity.

(4) **WATER BOTTOMS.**

(i) Every delivery must be free of all water bottoms prior to discharge; and

(ii) The Contractor is responsible for their removal and disposal.

(5) **VOLUME CORRECTION.** Volume correction to liters at 15°C (or gallons at 60°F) is required for--

(i) All product volumes determined by gauging.

(ii) All product volumes determined by loading rack meters.

(iii) All pipeline tenders.

(iv) All product volumes determined by weight.

(v) All product volumes determined by meters or calibrated markers that are in excess of 20,000 liters (5,000 gallons) or that have a kinematic viscosity equal to or greater than 5.5 mm³/s.

(6) **MEASUREMENT STANDARDS.** All measurements and calibrations made to determine quantity shall be in accordance with the most recent edition of the API Manual of Petroleum Measurement Standards (MPMS). Outside of the United States, other technically equivalent national or international standards may be used. Certified capacity tables shall mean capacity tables prepared by an independent inspector or any independent surveyor. In addition, the following specific standards will be used as applicable:

(i) **API MPMS Chapter 11.1, Volume Correction Factors** (API 2540/ASTM D 1250/IP 200/ISO 91-1). Either the printed version or the computer subroutine versions of the standard may be used.

(A) Use Volume VIII, Tables 53B and 54B (or Volume II, Tables 5B and 6B) for all bunker fuels.

(B) Volume XII, Table 52, shall be used to convert cubic meters at 15°C to barrels at 60°F, except when this method is restricted by foreign law. Convert liters at 15°C to cubic meters at 15°C by dividing by 1,000. Convert gallons at 60°F to barrels at 60°F by dividing by 42. Should foreign law restrict conversion by this method, the method required by law shall be stated in the offer.

(C) If the original measurement is by weight and quantity is required in U. S. gallons, then--

(a) Volume XII, Table 58, shall be used to convert metric tons to U.S. gallons at 60°F.

(b) Volume XI, Table 8, shall be used to convert pounds to U.S. gallons at 60°F.

(D) If the original measurement is by volume and quantity is required in metric tons, then metric tons shall be calculated by multiplying the volume in (m³) at 15°C by the density (in kg/m³) at 15°C. Convert kilograms to metric tons by dividing by 1,000.

(ii) **API MPMS Chapter 4, Proving Systems.** All meters used in determining product volume shall be calibrated using this standard with the frequency required by local regulation (foreign or domestic). If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 6 months, whichever is more frequent.

(e) **BACKHAUL. NOTE:** Navy and USCG regulations may require certain vessels to "top-off" for maintaining a specific reservoir of fuel quantity on-board at all times when on stand-by mode. In addition, instability of the vessel in water may result in variances between the quantity ordered vice receivable by the vessel, resulting in returned product.

(1) On f.o.b. destination deliveries as ships' bunkers, excess quantities ordered but not accepted by the Government will be referred to as **backhaul**. **Contractors shall limit the time product remains in transit or on-board the barge or truck until sold to another party to mitigate costs. Failure to do so may result in denial of the claim.**

(2) Any backhaul remaining after delivery has been made will be handled as follows:

(i) The Contractor shall notify the Contracting Officer and the Ordering Officer as to the amount and type of product not taken by the vessel and the location(s) that caused the backhaul.

(ii) The Contractor may file a claim with the Government for returned quantities. This claim shall be submitted to the Contracting Officer in accordance with procedures set forth in paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause. **For backhaul:** a copy of the transportation provider's and/or supplier's invoice for the transportation cost must be provided as evidence to substantiate the actual cost of transportation cost per unit of issue. If the claim will include damages for sale to a third party at a loss, evidence of both the price paid by the contractor and the third party sales price must be submitted. **For demurrage:** a detailed copy of the incurred demurrage charge must be provided as evidence to substantiate the demurrage rate. A copy of the written fuel order (as cited in the SUPPLIES TO BE FURNISHED (BUNKERS) clause) and signed receiving reports from the Government must also be submitted for all claims described above.

(iii) Claims shall be forwarded to the Contracting Officer, with supporting documents, no later than 120 days after the original delivery date, failing which the Government shall be discharged from any and all liability in respect thereof.

(iv) Product downgraded due to its inability to be reintroduced into a terminal shall be treated as a separate claim unlike backhaul. Contractors must submit all supporting documentation of this result to the Contracting Officer to substantiate the claim and within the time-frame as described in (iii) above.

(f) **CONTRACTOR DELIVERY DELAYS.**

(1) The Contractor shall be liable for costs the Government incurs due to delays/detainments/demurrage of vessels when--

(i) The actual pumping rate for the method of delivery does not meet the required contract rate;

(ii) The Contractor fails to deliver due to fuel shortages/outages;

(iii) The Contractor cannot deliver by the contracted method of delivery;

(iv) The Contractor fails to provide the proper delivery conveyance equipment; or

(v) Any other delay or default that does not constitute an excusable delay.

(2) Any demurrage claims against the Contractor shall be computed to the nearest half hour.

(3) **MILITARY SEALIFT COMMAND (MSC) VESSELS.**

(i) If the delayed vessel is under a voyage (spot) charter, demurrage may be assessed at the rate provided in the charter. For long term barge contracts not awarded by MSC, demurrage may be assessed at the contract hire rate for the vessel. In all cases when the vessel is under charter, the demurrage payable by the Contractor shall not exceed the actual demurrage expense incurred by the Government.

(ii) If the vessel is not under a voyage charter, demurrage may be assessed at the demurrage rate for that class of vessel as published by the MSC.

(4) Acceptance of a late delivery shall be for the purpose of mitigating damages and shall not constitute a waiver of the Government's right to recover delay damages from the Contractor.

(g) **CANCELLATIONS: SEE paragraph (e) for BACKHAUL.** Any cancellations due to a mission change will be handled as Backhaul if a barge/truck has already been loaded and enroute. Any other situation will be handled in accordance with FAR Part 49, under Termination for the Convenience of the Government, Clause 11.03-5, paragraph (1).

(DESC 52.247-9FE5)

F3.01 TRANSPORT TRUCK, TRUCK AND TRAILER AND/OR TANK WAGON FREE TIME AND DETENTION RATES (BUNKERS) (DESC MAR 1997)

(a) Upon arrival of Contractor's transport truck, truck and trailer, or tank wagon, the receiving activity shall promptly designate the delivery point into which the load is to be discharged. The Contractor shall be paid for detention beyond free time for delays caused by the Government. A minimum of one hour free time is required per item requiring transport truck, truck and trailer, or tank wagon delivery.

(1) Additional free time per item for unloading a transport truck, truck and trailer, or tank wagon in excess of the required one hour: _____.

(2) Rate per item for detention beyond required, plus any additional, free time: _____.

NOTE: The above will not be considered in the evaluation of offers for award.

(b) Notwithstanding the above, the Government is entitled to at least as much free time as is allowed by the common carrier or that the Contractor normally allows its regular commercial customers, whichever is greater. In addition, the Government will not pay more in detention rates than the actual rate charged by the common carrier or the rate the Contractor normally charges its regular commercial customers, whichever is lower. **UNLESS THE OFFEROR OTHERWISE INDICATES IN PARAGRAPH (a)(1) and (2) ABOVE, FREE TIME WILL BE CONSIDERED UNLIMITED.**

(c) **DETENTION COSTS.** Detention costs will be the sole responsibility of the activity incurring them. Any invoices for detention costs will be forwarded directly to the activity receiving the product.

F16.03-100 BARGE UNLOADING CONDITIONS (SHIPS' BUNKERS) (DESC MAY 2005)

(a) **DEFINITIONS.** The following definitions apply herein:

(1) **BACKHAUL:** Transportation charges associated with returning excess quantities ordered but not taken by the Government to the supply terminal or, if not returnable, incurred demurrage until the product is sold to a third party. Backhaul may also include the difference between the price the Contractor paid for the product and any lower market price actually received by the Contractor in making a good faith effort to mitigate damages by selling the product to a third party.

(2) **DEMURRAGE:** A fee charged for exceeding free time allowed by contract for barge loading or unloading.

(b) **ORDERING PROCESS.** The supplies ordered hereunder shall be delivered to the destination specified in a verbal order and/or DD 1155, SF 44, SF 1449, OF 347, or CD 404 (to be referred to in this clause as the "ordering document"), in accordance with the contract schedule, unless mutually agreed to by the parties. Unless otherwise specified in the contract, orders placed for bunkers for delivery (anchorage and/or pier-side) by means of barge will be furnished to the Contractor at least 48 hours, in advance of the date/time on which delivery is to be made, which date is hereinafter referred to in this clause as the "scheduled delivery date". Each order will specify the quantity to be delivered, the scheduled delivery date, and delivery location.

(c) **SCHEDULED DELIVERY DATE.** The scheduled delivery date may be changed by mutual agreement of the parties. If an agreement on a new scheduled delivery date cannot be reached, the previous scheduled delivery date will be maintained.

(d) **EXPECTED TIME OF ARRIVAL.** The Contractor must provide to the receiving Government vessel a notice of readiness to bunker at least 1 hour prior to the scheduled bunkering. The Government shall provide a safe and assessable berth for the Contractor's bunkering vessel, not later than 1 hour after receipt of the Contractor's bunkering vessel's notice of readiness to bunker.

(e) **LAYTIME.** Unless otherwise provided in the ordering document, the Government shall be allowed and will complete receipt of the bunkers within laytime determined as follows:

(1) One hour for each 1,500 barrels of supplies to be bunkered. (Example: Quantity to be bunkered is 4,000 barrels, laytime will be 2 hours and 40 minutes.) This assumes the barge delivering bunkers is capable of pumping into the receiving vessel at a rate of 1,500 barrels per hour (BPH). Laytime will be extended by the appropriate additional time when the pumping rate is less than 1,500 BPH.

(2) Laytime shall commence at the later of:

(i) At Notice of Readiness (NOR) plus 1 hour; or

(ii) Immediately upon arrival in berth of the Contractor's bunkering barge (i.e., all fast) provided that the Contractor provided notice of readiness to bunker at the proper time. (See paragraph (c) above.)

(3) Laytime shall continue 24 hours a day, 7 days a week, without interruption, unless port authority regulations require differently, from its commencement until bunkering of the barge is completed and the hoses have been disconnected.

(f) **LAYTIME CREDIT.**

(1) If regulations of the Port Authority prohibit bunkering at any time, time so lost shall be added to the amount of allowed laytime.

(2) Delays, after commencement of laytime, attributed to the Contractor or its employees, agents, or subcontractor(s), including delays caused by the condition or failure of the bunkering barge, will be added to the allowed laytime. In the event of Contractor delay, if total adjusted laytime is not fully utilized and/or is exceeded due to further Contractor delays, the provisions of paragraph (e), Contractor Delivery Delays, of the **BUNKERING PROVISIONS** clause (**F1.01-2**) may be utilized.

(3) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the Government will result in increasing basic allowed laytime for one half of the delay.

(4) In the event of delay caused solely by the Government, if total allowed laytime and freetime are exceeded, the Contractor may bill for demurrage charges in accordance with paragraph (j) below. Evidence of such delay must be provided.

(g) **DELAYS.** In the event of a breakdown of the Contractor's equipment, which prohibits bunkering for at least 2 hours, the Contractor will be required to remove the equipment from the Government-provided berth, unless permission is granted by the Government to allow the equipment to remain at berth. When the Government grants permission for the Contractor's equipment to remain at berth, the Contractor will be responsible to reimburse the Government for any cost incurred by the Government for furnishing personnel to remain with the barge during repair. If the Contractor removes the equipment from the Government-provided berth, notice of readiness to bunker will be again required as provided in paragraph (d) above.

(h) **EQUIPMENT.** Proper hoses for bunkering a barge shall be provided by the Contractor. However, the Government shall be responsible for connecting and disconnecting the hoses at the flange of the receiving Government vessel.

(i) **TITLE.** Title to the supplies delivered, and risk of loss thereof, shall pass from the Contractor to the Government when the supplies cross the receiving Government vessel's manifold.

(j) **DEMURRAGE RATE.** The rate payable per hour by the Government for detainment of the Contractor's barge will be specified below. The demurrage rate payable to the Contractor shall in no event exceed the actual demurrage expense incurred by the Contractor's bunkering barge, and in the event that the Contractor fails to specify charges below, then the rate shall be those reasonable demurrage expenses actually incurred by the Contractor. Free time allowed and demurrage rates are not considered in evaluation of offers for awards although rates and times may be addressed during negotiations.

Demurrage Rate Beyond Free Time

Per Hour

<u>Item</u>	<u>Free Time Allowed</u>	<u>Barge</u>	<u>Tug</u>	<u>Other (explain)</u>
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NOTE: Exceptions to laytime are not allowed.

(DESC 52.247-9FG1)

(DESC 52.247-9FE1)

F18 F.O.B. DESTINATION (NOV 1991)

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any

delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarded for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall-

- (1) (i) Pack and mark the shipment to comply with contract specifications; or
- (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (2) Prepare and distribute commercial bills of lading;
- (3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the

consignee at the delivery point specified in the contract;

- (5) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (6) Pay and bear all charges to the specified point of delivery.

(FAR 52.247-34)

F30.04 ORDERS (FOREIGN VESSELS) (DESC AUG 1999)

Any order placed pursuant to this contract for delivery as ships' bunker shall be honored by the Contractor, regardless of the nationality of registry of the vessel to be bunkered, provided that the order shall have been properly placed by the authorized Ordering Officer citing an appropriation of U.S. Government funds and complying with the provisions outlined in the contract, specifically in the SUBMISSION OF INVOICES FOR PAYMENT (BUNKERS) clause. The responsible Ordering Officer shall ensure that all procedures are followed in order to allow for payment to the Contractor via normal channels.

(DESC 52.216-9FA3)

F90-100 PERFORMANCE AT A MILITARY PORT (DESC JUNE 2005)

(a) When performance requires delivery of fuel at a U.S. or foreign military port, the Contractor, its employees, agents, and subcontractor(s) shall comply with any requirements for Force Protection that may be imposed by that port's Governing Authority in accordance applicable laws, regulations or policies. At the Contracting Officer's discretion, a Contracting Officer's Representative may be designated at time of award, who will act as the liaison between the Contractor and the Governing Authority to facilitate receipt of the necessary permission for fueling at that particular port.

(b) The Contractor will be responsible for ensuring that no damage is done to Government property in the course of its performance under this Contract. In the event that acts or omissions of the Contractor, its employees, agents, or subcontractors result in damage to Government property, the Contractor shall be liable for the costs of any replacement, repair, remediation or other associated expenses.

(c) The Contractor shall be required to submit an addendum to its Oil Spill Response Plan addressing each specific military port and the provisions made to accommodate each location for its unique environmental requirements.

F105 VARIATION IN QUANTITY (APR 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) below.

(b) The permissible variation shall be limited to--

10% Percent increase

10% Percent decrease

This increase or decrease shall apply to EACH DELIVERY ORDER.

(FAR 52.211-16)

G9.06 ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DESC DEC 1999)

Remittances shall be mailed only at the Government's option or where an exception to payment by Electronic Funds Transfer (EFT) applies. (See the PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION or the PAYMENT BY ELECTRONIC FUNDS TRANSFER - OTHER THAN CENTRAL CONTRACTOR REGISTRATION clause.)

Offeror shall indicate below the complete mailing address (including the nine-digit zip code) to which remittances should be mailed if such address is other than that shown in Block 15a (Standard Form (SF) 33) for noncommercial items or Block 17a (SF 1449) for commercial items. In addition, if offeror did not incorporate its nine-digit zip code in the address shown in Block 15a of the SF 33 or in Block 17a of the SF 1449, the offeror shall enter it below:

(a) Payee Name (Contractor): _____
(DO NOT EXCEED 25 CHARACTERS)

(b) Check Remittance Address:

(DO NOT EXCEED 30 CHARACTERS PER LINE)

(c) Narrative Information (special instructions).

(DO NOT EXCEED 153 CHARACTERS)

(DESC 52.232-9F55)

THIS CLAUSE APPLIES ONLY TO DESC-FUNDED ITEMS.

G9.07 ELECTRONIC TRANSFER OF FUNDS PAYMENTS - CORPORATE TRADE EXCHANGE (DESC FEB 2003)

(a) The Contractor shall supply the following information to the Contracting Officer no later than 5 days after contract award and before submission of the first request for payment. The bank designated as the receiving bank must be located in the United States and must be capable of receiving Automated Clearing House (ACH) transactions.

NAME OF RECEIVING BANK: _____
(DO NOT EXCEED 29 CHARACTERS)

CITY AND STATE OF RECEIVING BANK: _____
(DO NOT EXCEED 20 CHARACTERS)

AMERICAN BANKERS ASSOCIATION NINE DIGIT IDENTIFIER OF RECEIVING BANK: _____

ACCOUNT TYPE CODE: (Contractor to designate one)

[] CHECKING TYPE 22

[] SAVINGS TYPE 32

RECIPIENT'S ACCOUNT NUMBER ENCLOSED IN PARENTHESES: _____
(DO NOT EXCEED 15 CHARACTERS)

RECIPIENT'S NAME: _____
(DO NOT EXCEED 25 CHARACTERS)

STREET ADDRESS: _____
(DO NOT EXCEED 25 CHARACTERS)

CITY AND STATE: _____
(DO NOT EXCEED 25 CHARACTERS)

NOTE: Additional information may be entered in **EITHER** paragraph (b) **OR** paragraph (c) below. Total space available for information entered in (b) **OR** (c) is 153 characters.

(b) SPECIAL INSTRUCTIONS/OTHER IDENTIFYING DATA:

(DO NOT EXCEED 153 CHARACTERS)

OR

(c) THIRD PARTY INFORMATION: Where payment is to be forwarded from the receiving bank to another financial institution for deposit into Contractor's account, the following information **must** be supplied by the Contractor: Second Bank Name, City/State and/or Country, Account Number, and Account Name.

(DO NOT EXCEED 153 CHARACTERS)

(d) CONTRACTOR'S DESIGNATED OFFICIAL SUBMITTING ELECTRONIC FUNDS TRANSFER INFORMATION.

NAME: _____
(DO NOT EXCEED 25 CHARACTERS)

TITLE: _____
(DO NOT EXCEED 25 CHARACTERS)

TELEPHONE NUMBER: _____
(DO NOT EXCEED 25 CHARACTERS)

SIGNATURE: _____

(e) Any change by the Contractor in designation of the bank account to receive electronic transfer of funds in accordance with this clause must be received by the Contracting Officer no later than 30 days prior to the date the change is to become effective.

(f) The electronic transfer of funds does not constitute an assignment of such funds in any form or fashion.

(g) In the event corporate trade exchange (CTX) payments cannot be processed, the Government retains the option to make payments under this contract by check.

(h) **NOTICE TO FOREIGN SUPPLIERS.**

(1) Payment may be made through the Federal Reserve Wire Transfer system. The bank designated as the receiving bank must be located in the United States and must be capable of receiving ACH transactions. The appropriate American Bankers Association nine-digit identifier must be supplied in order for payments to be processed through CTX.

(2) If your account is with a foreign bank that has an account with a bank located within the United States, the U.S. bank may be designated as the receiving bank. The recipient's name and account number shall identify the foreign bank, and transfer instructions to supplier's account must be specified in (b) **OR** (c) above.

(3) The Third Party information supplied in (c) above will be located in the first RMT segment of the CTX payment information sent to the receiving bank.

(i) Notwithstanding any other provision of the contract, the requirements of this clause shall control.

(DESC 52.232-9FJ1)

G9.09-1 PAYMENT BY ELECTRONIC FUNDS TRANSFER - OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) **METHOD OF PAYMENT.**

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either-

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) **MANDATORY SUBMISSION OF CONTRACTOR'S EFT INFORMATION.**

(1) The Contractor is required to provide the Government with the information required to make contract payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information no later than 5 days after award. If not otherwise designated in the contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated payment office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) **MECHANISMS FOR EFT PAYMENT.** The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal Payments through the ACH are contained in 31 CFR Part 210.

(d) **SUSPENSION OF PAYMENT.**

(1) The Government is not required to make any payment until after receipt, by the designated office, of the correct EFT information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of any delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) **LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS.**

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously direct funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provision of paragraph (d) shall apply.

(f) **EFT AND PROMPT PAYMENT.** A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) **EFT AND ASSIGNMENT OF CLAIMS.** If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) **LIABILITY FOR CHANGE OF EFT INFORMATION BY FINANCIAL AGENT.** The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) **PAYMENT INFORMATION.** The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) **EFT INFORMATION.** The Contractor shall provide the following information to the designated office. The Contractor may supply this data for multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

- (1) The contract number (or other procurement identification number).
- (2) The Contractor's name and remittance address, as stated in the contract(s).
- (3) The signature (manual or electric, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
- (5) The Contractor's account number and the type of account (checking, savings, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
- (7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System and, therefore, not the receiver of the wire transfer payment.

(FAR 52.232-34)

(a) The Contractor shall submit an original of the invoice, a signed copy of the delivery order and a signed commercial receipt to the responsible paying office. A copy of the order, certified for receipt as specified in the SUPPLIES TO BE FURNISHED (SHIPS' BUNKERS) clause, may be submitted in lieu of the commercial receipt. For oral orders, if the activity does not provide the Contractor with a written delivery order within 24 hours after completion of delivery, the Contractor may substitute in place of the signed delivery order a statement indicating that a written delivery order was not received and setting forth:

- (1) the purchase order and/or delivery order number assigned to the oral order
- (2) the name, organization and contact information of the individual placing the order; and
- (3) the delivery specifics communicated to the Contractor via the oral order.

(b) Quantities invoiced for domestic deliveries shall be expressed in U.S. gallons as whole numbers. Quantities invoiced for overseas deliveries shall be expressed in metric tons and shall not exceed 2 decimal places (rounded up).

(c) The appropriate paying office shall return incomplete and/or incorrect invoice and commercial receipt data (as described above) to the Contractor for correction. The paying office shall forward incorrect order forms to the ordering activity for correction.

(d) Invoices for all U.S. Navy, U.S. Army, U.S. Army Corps of Engineers, U.S. Military Sealift Command, and U.S. Coast Guard fuel deliveries shall be submitted to--

ATTN: DFAS-CVDBBA/CO
 DEFENSE FINANCE AND ACCOUNTING SERVICE -- COLUMBUS CENTER
 FUELS ACCOUNTING AND PAYMENTS DIVISION
 P.O. BOX 182317
 COLUMBUS, OH 43218-6251

(e) **TAXES.** DFAS Columbus is responsible for paying allowable taxes excluded from the unit price and listed under the SUPPLIES TO BE FURNISHED (SHIPS' BUNKERS) clause. **NOTE:** The Federal Excise Tax (FET) shall **NOT** be paid when the Contractor clearly annotates on the invoice and commercial bunker receipt or bill of lading "DYED DIESEL FUEL. NONTAXABLE USE ONLY. PENALTY FOR TAXABLE USE." FET on undyed diesel fuel charged as a separate item shall be paid by the paying office at the rate in effect per the contract. After-imposed taxes and/or tax rate changes will follow the provisions of the FEDERAL, STATE, AND LOCAL TAXES (DEVIATION) and FEDERAL AND STATE TAXES/FEES EXCLUDED FROM CONTRACT PRICE clauses, and/or the TAXES – FOREIGN FIXED-PRICE CONTRACTS clause.

(f) Invoices for all other Federal/Civil Agency deliveries (including, but not limited to, NASA, NOAA, and Maritime Administration (MARAD) and their agents) shall be submitted to the paying office designated in Block 21 of the OF 347, the block entitled AGENCY NAME AND BILLING ADDRESS of the SF 44, block D of CD Form 404, or block 18a or b of the SF 1449. **NOTE:** The provisions of (v) above concerning payment of taxes shall apply when DFAS Columbus is **NOT** the paying office. **FURTHER NOTE:** NASA and MARAD may utilize ship managers to make fuel invoice payments. Payment procedures described herein for manual invoices shall still apply.

(g) **INSTRUCTIONS FOR SUBMITTING INVOICES VIA FACSIMILE.**

(1) When the Contractor has elected to transmit invoices by FAX for the life of the contract, it is responsible for validating receipt of its FAXED invoice. Because the applicable payment office cannot be held accountable for transmissions not received, the Contractor may verify transmission/receipt of its FAX by retaining the facsimile confirmation.

<u>Payment Activity</u>	<u>Facsimile Number</u>	<u>Customer Service</u>	<u>Email Address</u>
DFAS-CO-CVDBBA	(614) 693-2473	(614) 693-0496 (614) 693-1832	PAT.GARWATOWSKI@DFAS.MIL FRANKLIN.MALICK@DFAS.MIL
NASA Cape Canaveral	(321) 867-3785	(321) 867-3801	

For DFAS-CVDBB/CO, personnel are available to verify receipt of FAXED transmissions between 8:00 a.m. and 5:00 p.m., EST/EDT, Monday through Friday, excluding Federal holidays.

(2) The Contractor shall include its FAX number on each document transmitted.

(3) After transmitting the original invoice, the Contractor shall mark that invoice **Original Invoice - FAXED"** and retain it. The hard copy is not required for payment and shall not be mailed to the payment office unless the payment office specifically requests it.

(4) A signed copy of the delivery order and a signed commercial receipt must accompany the invoice FAXED for payment. A copy of the order, certified for receipt as specified in (a)(2)(i) above, may be submitted in lieu of the commercial receipt.

(h) **COURIER DELIVERY OF INVOICES.** Couriers, acting on behalf of Contractors, must deliver Contractor invoices being submitted for payment to the following mailroom street address:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER
DFAS-CVDBB/CO
3990 EAST BROAD STREET, BLDG 21
COLUMBUS, OH 43213-1152

(i) **PAYMENT OF INVOICES** shall be made in accordance with the provisions herein. No credit card, check, or cash issued by the receiving vessel/activity, Defense Attaché Office, U.S. Embassy nor any other field office shall be used to fund a delivery under this contract. Payment shall only be made by the payment office designated on the order form. **NOTE: DESC is in the process of implementing the Ships bunkers Easy Acquisition (SEA) Card program, whereby DESC will issue purchase cards to its customers for use in purchasing bunkers fuel. Once implemented, use of the SEA Card for fuel purchases and/or payment will be permissible.**

(1) **FOR FIRM-FIXED PRICE CONTRACTS WITHOUT ECONOMIC PRICE ADJUSTMENT:** The unit price listed on the invoice or the unit price stated in the contract, whichever is less.

(2) **FOR FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENT:** The unit price listed on the invoice or the unit price on the modification in effect at the completion delivery date, whichever is less.

(3) **FOR QUANTITY:** The invoiced net quantity or the net quantity certified on the receipt document, whichever is less.

(4) **CURRENCY.** All payments shall be made in U.S. dollars.

(j) **INVOICING FOR ADDITIONAL COST(S) (DETENTION, OVERTIME, ALTERNATE MODES OF DELIVERY, ETC.).** Contractors may submit claims for additional charges to the DESC Contracting Officer for review. The Contracting Officer will issue a contract modification for all approved additional charges, which authorize payment. Once approved, hard copies of the invoice, order, or receipt are not required with the invoice unless requested by the paying office.

(k) **PAYMENT INQUIRIES** should be directed to the paying office applicable to the delivery. **Contractors must register to use "MY INVOICE," which is the only source of payment information currently available for hard copy payment vouchers. You can register by visiting the DFAS home page: <http://www.dfas.mil/money/vendor> . You will need to follow the download and installation instructions located under the "JInitiator Download" button. For assistance with registration, call BARBARA INSKEEP at DFAS on (614) 693-6665. For those payment issues not successfully resolved between the Contractor and the payment office, the Contractor shall contact the DESC Contracting Officer for resolution.**

(DESC 52.232-9F80)

11.20-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC JAN 2003)

(a) This clause incorporates contract clauses and solicitation provisions by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

(b) The full text of any FAR, DFARS, or DLAD solicitation clause or provision may be accessed electronically at these addresses:

FAR/DFARS: <http://farsite.hill.af.mil>

DLAD: <http://www.dla.mil/j-3/j-336>

(c) **All DESC clauses and provisions are contained in full text in this document.**

(d) **Solicitation Provisions Only.** The offeror is cautioned that the solicitation provisions listed in (e)(1) below may include blocks that must be completed by the offeror and submitted with its quotation or offer. As long as the offeror identifies the solicitation provision by number, the offeror may simply complete those paragraphs requiring fill-in information to submit with its quotation or offer. In addition to the solicitation provisions listed in (e)(1) below, the contract clauses listed in (e)(2) below shall apply to any resultant contract but do not require the submission of additional offer information.

(e) The following FAR/DFARS/DLAD contract clauses and solicitation provisions are hereby incorporated by reference in addition to those listed in the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS and the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS clauses:

(1)

<u>SOLICITATION PROVISION NUMBER</u>	<u>REGULATORY NUMBER</u>	<u>PROVISION TITLE</u>
(2)		
<u>CONTRACT CLAUSE NUMBER</u>	<u>REGULATORY NUMBER</u>	<u>CLAUSE TITLE</u>
12.05	FAR 52.212-4	CHANGES - FIXED-PRICE (AUG 1987)

(DESC 52.252-9F08)

11.22-1 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a Contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement

contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(FAR 52.203-8)

12.03 CHANGES - FIXED-PRICE (DEVIATION) (DESC MAY 1997)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Specifications of the supplies to be furnished.

(2) Method of shipment or packing.

(3) Grade of the product to be furnished, but only to a grade within the same specification.

(4) Type of container or of transportation equipment.

(5) Place of inspection, delivery or acceptance.

(6) Destination of shipments.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(DESC 52.243-9F05)

111.01-2 ADMINISTRATIVE COST OF TERMINATION FOR CAUSE -- COMMERCIAL ITEMS (DESC FEB 1996)

(a) In the event this contract is terminated for cause, in whole or in part, the Government will incur administrative costs.

(b) The Contractor agrees to pay all administrative costs associated with a contract termination action. The minimum amount the Contractor shall pay for each termination action is \$500. This payment for administrative costs is in addition to any excess repurchase costs and any other remedies or damages resulting from the termination.

(c) The term **termination action**, as used herein, means the termination for cause, including any associated repurchase effort, involving--

- (1) Any single order or any group of orders terminated together;
- (2) Any item or group of items terminated together; or
- (3) The entire contract.

(DESC 52.249-9F20)

120 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) (1) **Bona fide agency**, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(2) **Bona fide employee**, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(3) **Contingent fee**, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(4) **Improper influence**, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(FAR 52.203-5)

128.01 FEDERAL, STATE, AND LOCAL TAXES (DESC AUG 2003) (DEVIATION)

(a) As used in this clause--

(1) **After-imposed tax** means any new or increased Federal, State, or local tax that the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the contract date.

(2) **After-relieved tax** means any amount of Federal, State, or local tax that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(3) **All applicable Federal and State taxes** means all excise taxes that the taxing authority is imposing and collecting on the transactions or property covered by this contract pursuant to written ruling or regulation in effect on the contract date.

(4) **Contract date** means the date set for bid opening or, if this is a negotiated contract or a modification, the date set for final revised prices.

(5) **Local taxes** means taxes levied by the political subdivisions of the States, District of Columbia, or outlying areas of the United States, e.g., cities and counties.

(6) **Outlying areas** means--

- (i) **Commonwealths.** Puerto Rico and The Northern Mariana Islands;
- (ii) **Territories.** American Samoa, Guam, and The U.S. Virgin Islands; and

(iii) *Minor outlying islands. Baker Island; Howland Island, Jarvis Island; Johnston Atoll; Kingman Reef; Midway Islands; Navassa Island; Palmyra Atoll; and Wake Atoll.*

(7) **State taxes** means taxes levied by the States, the District of Columbia, or outlying areas of the United States.

(8) **Tax** means taxes, duties and environmental or inspection fees, except social security or other employment taxes.

(b) The contract price includes all applicable Federal, State, and local taxes, except as otherwise provided. (See either the FEDERAL AND STATE TAXES/FEEs EXCLUDED FROM CONTRACT PRICE clause or the FEDERAL, STATE, AND LOCAL TAXES AND FEES clause.)

(c) The contract price shall be increased by the amount of any after-imposed tax if the Contractor states in writing that the contract price does not include any contingency for such tax.

(d) The contract price shall be decreased by the amount of any after-relieved tax.

(e) The contract price shall also be decreased by the amount of any tax that the Contractor is required to pay or bear the burden of, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of all matters relating to any tax that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(g) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(DESC 52.229-9F15)

128.02-1 FEDERAL AND STATE TAXES/FEEs EXCLUDED FROM CONTRACT PRICE (DESC APR 2005)

(a) **FEDERAL EXCISE TAXES EXCLUDED.** Contract prices for fuel and oils furnished under this contract exclude Federal Excise Tax (FET). Contractors shall invoice applicable FET as follows:

(1) **GASOLINE/GASOHOL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(2) **AVIATION GASOLINE.** Contractors should **not** invoice for FET on fuel to be used in a military aircraft. The Government will provide a Certificate of Ultimate Purchaser to support the sale at a tax excluded price.

(3) **RESIDUAL FUEL OIL (NUMBERS 5 AND 6).** There is no FET on residual fuel oil.

(4) **DIESEL FUEL.**

(i) **UNDYED DIESEL FUEL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(ii) **DYED DIESEL FUEL.** There is no FET on dyed diesel fuel.

(iii) **F76.** There is no FET on F76. F76 is excluded from the definition of diesel fuel under Internal Revenue Service (IRS) Regulation 26 CFR Section 48.4081-1.

(iv) **JPTS.** There is no FET on JPTS. JPTS is not included in the definition of taxable products in the tax code.

(5) **AVIATION GRADE KEROSENE (JET FUEL).** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice. **NOTE: Aviation grade kerosene used in a military aircraft is nontaxable when being transferred from the refinery via pipeline or vessel. However, FET applies if the transfer is via truck or rail. A Contractor not permitted by IRS regulations to sell fuel tax-free must state that in its offer.**

(b) **STATE EXCISE TAXES EXCLUDED.** All contract prices exclude State excise taxes on fuels (including all bulk fuels, bunkers, and bulk lube products). Contractors should include any applicable State excise taxes (for which no exemption applies) as a separate item on the Contractor's invoice in accordance with the terms of this contract.

(c) **OTHER STATE TAXES INCLUDED.** Unless an exemption applies, all contract prices INCLUDE State taxes other than excise taxes.

(d) **LOCAL TAXES INCLUDED.** Unless an exemption applies, all contract prices INCLUDE local (city, county, etc.) taxes.

(e) **ENVIRONMENTAL AND OIL SPILL TAXES AND INSPECTION FEES INCLUDED.** Unless an exemption applies, all contract prices INCLUDE State and local environmental and oil spill taxes and inspection fees.

(f) **LICENSES.** Federal, State, and local licenses or other activities necessary to establish Contractor's entitlement to do business and/or to make tax-exempt sales under this contract are the Contractor's responsibility. Failure to obtain appropriate licenses or to follow required procedures shall preclude the reimbursement of taxes that would otherwise be exempt.

(DESC 52.229-9F20)

128.03-1 TAX EXEMPTION CERTIFICATES (DESC AUG 2003)

(a) **FEDERAL AND STATE EXCISE TAXES.** Contractors shall forward requests for tax exemption certificates covering any Federal Excise Tax (FET) or State excise tax to the Contracting Officer or Ordering Officer.

(b) **STATE TAXES OTHER THAN EXCISE TAXES, LOCAL TAXES, AND ENVIRONMENTAL TAXES AND FEES.** Contractors shall forward requests for tax exemption certificates covering any State taxes other than excise taxes to the Contracting Officer or Ordering Officer. Examples of such taxes include local taxes, environmental taxes and inspection fees.

(c) **GOVERNMENT OPTION TO DEDUCT TAX AND FURNISH TAX EXEMPTION CERTIFICATES.** If this contract provides that the Contractor should invoice for FET, the supplies to be furnished at the time of contract execution are generally intended for a taxable purpose. However, where the invoice for any item includes FET and tax exemption can be claimed, the applicable tax may be deducted by the Government from the order or the invoice and a tax exemption certificate furnished in lieu of paying the tax. The Contracting Officer or Ordering Officer will issue these tax exemption certificates.

(DESC 52.229-9F40)

I33 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA clause or a COST ACCOUNTING STANDARDS clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(FAR 52.232-17)

THE FOLLOWING CLAUSE APPLIES ONLY TO UNRESTRICTED ITEMS AND, IF APPLICABLE, ANY TOTAL SMALL BUSINESS SET-ASIDE ITEMS.

I84 REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ORDERING clause. Subject to any limitations in the ORDER LIMITATIONS clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the ORDERING clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; PROVIDED, that the Contractor shall not be required to make any deliveries under this contract after **OCTOBER 31, 2007**.

(FAR 52.216-21)

190 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAR 2005)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC or if OFAC's implementing regulations at 31 CFR Chapter V would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.epls.gov/TerList1.html>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(FAR 52.225-13)

1171.07 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999)

(a) **Failure to make a good faith effort to comply with the subcontracting plan**, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled SMALL BUSINESS SUBCONTRACTING PLAN, or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled SMALL BUSINESS SUBCONTRACTING PLAN, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled DISPUTES, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(FAR 52.219-16)

1179 ALLOCATION (DESC JUL 1995)

(a) **REDUCED SUPPLIES.** If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, PROVIDED--

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency, or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other customers similarly situated.

(b) **ADDITIONAL SUPPLIES.** If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action:

(1) Accept an updated pro rata reduction as outlined in (a) above;

(2) Determine that continuance of the contract with the quantities as originally stated in the Schedule is in the best interests of the Government; or

(3) Terminate the contract as permitted in (d) below.

(c) **REDUCED DELIVERIES.** If the Contractor believes that a law, regulation, or order of a foreign government requires the Contractor to deliver less than the quantity set forth in the Schedule for any location within that country, the Contractor may request allocation in accordance with (a) above. In addition to the criteria in (a) above, the Contractor's request shall cite--

(1) The law, regulation, or order, furnishing copies of the same;

(2) The authority under which it is imposed; and

(3) The nature of the Government's waiver, exception, and enforcement procedure.--

The Contracting Officer will promptly review the matter and advise the Contractor whether or not the need to allocate has been substantiated. If the law, regulation, or order requiring the Contractor to reduce deliveries ceases to be effective, the Contractor shall resume deliveries in accordance with the original Schedule.

(d) If, as a result of reduced deliveries permitted by (a), (b), or (c) above, the Contracting Officer decides that continuation of this contract is no longer in the best interests of the Government, the Government may terminate this contract or any quantity thereunder, by written notice, at no cost to the Government. However, the Government shall not be relieved of its obligation to pay for supplies actually delivered to and accepted by it.

(e) Except as otherwise stated in (b) above, any volumes omitted pursuant to (a) or (b) above shall be deleted from this contract, and the Contractor shall have no continuing obligation, so far as this contract is concerned, to make up such omitted supplies.

(f) For Posts, Camps, and Stations contracts, Department of Energy priority orders and allocation regulations will take precedence over any conflicting provisions of this clause.

(g) For Bulk Fuels contracts, the provisions contained in (a) above shall be inoperative when the Secretary of Defense makes a written determination that it is essential to the National Defense that the Defense Energy Support Center be provided contract volumes exceeding the amount of product to which it would otherwise be entitled.

(DESC 52.249-9F05)

**1180.04 COMPLIANCE WITH FEDERAL, STATE, AND LOCAL ENVIRONMENTAL REQUIREMENTS
(DESC AUG 1990)**

(a) Gasoline, gasohol, burner fuel oils, and/or diesel fuel oils delivered under this contract shall conform to all Federal, State, and local environmental requirements applicable to the geographic location of the receiving activity on the date of delivery. The environmental requirements contained in this contract are not intended to be comprehensive, and the Contractor shall be responsible for determining the existence of any additional environmental requirements.

(b) In the event that a Federal, State, or local environmental requirement is more stringent than the military specification contained in this contract, the Contractor shall deliver product that complies with the more stringent requirement. Product failing to meet the more stringent requirement will be considered to be a nonconforming supply.

(c) Contractors shall be held responsible for payment of any fines or penalties imposed on a receiving activity by an environmental agency, resulting from the delivery of nonconforming supplies under a DESC contract.

(DESC 52.223-9F20)

1190.06 MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS (DESC MAR 2000)

(a) The Contractor agrees to submit to the Contracting Officer, upon request, a Material Safety Data Sheet (MSDS) that meets the requirements of 29 CFR 1910.1200(g) and the latest revision of Federal Standard No. 313 for all requested contract items. MSDSs must cite the contract number, the applicable CAGE code of the manufacturer, and, where so identified, the National Stock Number (NSN).

(b) The data on the MSDSs must be current and complete, reflecting the final composition of the product supplied. Should the description /composition of the product change in any manner from a previously submitted MSDS, the Contractor shall promptly provide a new MSDS to the Contracting Officer.

(DESC 52.223-9F06)

1229 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT ALTERNATE I (OCT 1995)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the

extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract that exceed \$100,000.

(FAR 52.203-6)

I350 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(FAR 52.233-4)